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Determinations – Tolling

Since the law provides that the Board shall not accept, consider or approve a claim for refund if it is founded upon the grounds that the Director of the Department of Toxic Substances Control (DTSC) has improperly or erroneously determined that a substance is a hazardous waste (Revenue and Taxation Code section 43452(d)), the statute of limitations is tolled for refund claims and petitions for redetermination during the period in which a feepayer is pursuing an appeal through DTSC. However the feepayer must have acted in a timely manner in requesting DTSC to reconsider its position that the waste is hazardous. 6/26/92A.



STATE BOARD OF EQUALIZATION

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June 26, 1992

BURTON W. OLIVER

Executive Director

Mr. (Redacted)

Re: (Redacted)
Claim for Refund of Hazardous Waste
Treatment Facility Fee

Dear (Redacted):

I am writing in response to your February 27, 1992 letter concerning a claim for refund filed by (redacted).

(Redacted) paid the facility fee imposed by Health and Safety Code Section 25205.2 for fiscal years 1987/88 and 1988/89, and the first installment of fiscal year 1989/90. On August 29, 1991, (redacted) filed a claim for refund of all the facility fees it paid, based on a recent determination by the Department of Toxic Substances Control (the "Department") that the facility in question never treated hazardous waste. On October 17, 1991, the Board's Environmental Fees Section rejected the claim for refund covering fiscal year 1987/88 because it was untimely.

In your August 29, 1991 letter to Senior Tax Auditor Debbie Tomlin, you indicated that (redacted) have been working with the Department since 1982 in an attempt to have the Department reconsider its determination that (redacted) was operating a hazardous waste treatment facility. In late 1991, the Attorney General, (redacted) and the Department signed a Consent Judgement which states that (redacted) did not treat hazardous waste at the facility from 1986 through 1990.

Based on the unique relationship between Revenue and Taxation Code Sections 43452(a) and 43452(d), I conclude that (redacted)'s August 29, 1991 claim for refund was timely filed if (redacted) can

Mr. (Redacted)

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June 26, 1992

document that, before April 1, 1991 (three years from the date the facility fee for fiscal year 1988/1989 was due), it requested that the Department reclassify the material treated at the facility as non-hazardous, and that (redacted) thereafter fully cooperated with the Department in its investigation of the matter.

Please contact me if you have any questions or if I can be of further assistance.

Very truly yours,

Janet Vining
Tax Counsel

JV:es

Cc: Mr. Allan K Stuckey
Mr. E. V. Anderson
Mr. Robert M. Frank
Mr. Lou Feletto
Mr. Donald J. Hennessy
Mr. E. L. Sorensen, Jr.
Mr. Lawrence A. Augusta
Mr. Dennis Mahoney, DTSC