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Standard Industrial Code

The fee is imposed on each employer who has 10 or more employees and is identified as a member of a specific Standard Industrial Code (SIC code) as established by the Department of Health Services.

Liability for the fee is based on SIC code classes for businesses which have documented evidence of the potential for lead poisoning, not on the record of any particular business or whether any employees were exposed to lead. 4/10/95.

STATE OF CALIFORNIA

BOARD OF EQUALIZATION

BUSINESS TAXES APPEALS REVIEW SECTION

In the Matter of the Petition)	
for Redetermination Under the)	DECISION AND RECOMMENDATION
Occupational Lead Poison)	
Program of:)	
)	
(Redacted))	No.: (Redacted)
)	
)	
<u>Petitioner</u>)	

The Appeals conference in the above-referenced matter was held by Paul O. Smith, Staff Counsel on (redacted), in Fresno, California.

Appearing for Petitioner: No Appearance

Appearing for the Environmental Fee Division of the Board (By Conference Call)	Kevin P. Sparks Tax Auditor
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<u>Protested Item</u>	<u>Amount</u>
Occupational lead poisoning fee for the period January 1, 1992 through December 31, 1992, per the Standard Industrial Classification Code.	\$ 180

Contentions

Petitioner contends that it is not liable for the fee for 1992 because it did not begin business until May 1, 1992. Petitioner further contends it is not liable for the fee because none of its employees were exposed to lead (even in the paint) during 1992.

Summary

During the period in issue petitioner (Redacted) Corporation manufactured asphalt patching equipment. In March 1994, petitioner submitted a form DHS 8484 "Request For Waiver Of The Occupational Lead Poisoning Fee". Petitioner claims its operations are "lead free". The Occupational Health Branch of the State Department of Health Services (hereinafter "DHS") extended the period within which to submit a waiver for 1992 to accommodate employers unfamiliar with the new law. (Cal. Code Regs, tit. 17, reg 38002, subd. (g)(2) provides that the waiver is due within 90 days after the due date of the 1992 return-February 28, 1993.) On December 10, 1993, the Occupational Health Branch issued a notice to the Board that it was no longer accepting waiver applications for calendar year 1992. Because petitioner's Standard Industrial Code (hereinafter "SIC code") identified it as a corporation subject to the Occupational Lead Poisoning Fee provisions, DHS provided petitioner's name to the State Board of Equalization (hereinafter "Board"). For the period in issue petitioner's SIC code was 3714-motor vehicle parts and accessories.

On March 12, 1994, the Board issued a Notice of Determination to petitioner, and on March 24, 1994, petitioner submitted a Request for Reconsideration contending that it was not liable for the fee because: (1) it never used any lead in its manufacturing process; and (2) it did not exist until May 1, 1992.

Analysis and Conclusion

Health and Safety Code section 429.14¹ provides in relevant part that an annual fee shall be paid by employers identified by the four-digit SIC code, as established by the U.S. Department of Commerce (S.I.C., 1987 Edition). (Health & Saf. Code § 429.14, subd. (a).) The relevant SIC code classifications are found in section 429.15. (Health & Safe. Code, § 429.14, subd. (b).) As set forth above, during the period in issue petitioner's SIC code was 3714-motor vehicle parts and accessories, and such SIC code is listed in section 429.15.

Further, as required by Section 429.14, DHS has found that SIC code 3714 was one with documented evidence of potential occupational lead poisoning in 1991. When an employer is identified as a member of the SIC code, that employer "shall" pay a fee to the Board. (Health & Safety Code, § 429.14, subd. (a).)

Petitioner argues that it is not liable for the fee because:

(1) it never used any lead in its manufacturing process; and (2) it did not exist until May 1, 1992.

However, liability for the fee is based on SIC codes for classes of businesses which have the potential for lead poisoning, not on the record of any particular business. An employer is subject to the annual fee as

¹ All references are to the Health and Safety Code, unless stated otherwise.

long as it has 10 or more employees, regardless of when during the year it began operations. (See Health & Safety Code, § 429.14, Subd. (c)). Since petitioner is in one of the classes identified as having a potential lead poisoning problem, it was proper for the Board to send a return to petitioner for payment of the fee for the entire year. Petitioner's remedy was to timely request a waiver of the fee from DHS.

Petitioner did not request a waiver of the 1992 fee until March 1994, which was after the extended date (December 10, 1993) for making such a request. Petitioner later requested and was granted a waiver for 1993 and subsequent years, but that waiver is not retroactive to 1992. For these reasons, I must conclude that the 1992 fee was properly assessed by the Board.

Recommendation

Deny the claim.

Date: _____

Paul O. Smith, Staff Counsel