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Determinations – Statute-1

The statute of limitations was not tolled while the feepayer engaged in negotiations with the Attorney General concerning an enforcement action taken by the Attorney General on behalf of the Department of Toxic Substances Control, even though the result of those negotiations included an agreement that the fee was not due. 3/4/92.

Memorandum

To: Mr. Allan K. Stuckey, Deputy Director
Special Taxes & Operations Department

Date: March 4, 1992

From: Janet Vining
Tax Counsel

Subject: (Redacted)

E. L. Sorensen, Jr. asked me to respond to your February 7, 1992 memorandum concerning (redacted) Inc.'s claim for refund.

The Department of Toxic Substances Control (DTSC) identified (redacted) as a small treatment facility for the 1987-88 fiscal year, and (redacted) was assessed and paid a fee of \$19,668.00 in two payments due October 1, 1987 and April 1, 1988. On May 28, 1991, (redacted) filed a claim for refund of the fee. The Environmental Fees Unit denied the claim because it was untimely.

(Redacted) asserts that it discussed the issue of the claim for refund with the Attorney General's office over several months, during the course of negotiations involving an enforcement action taken by the Attorney General on behalf of DTSC. Those negotiations resulted in the signing of a consent decree concerning the continued operation of (redacted)'s facility. (Redacted) asserts that DTSC now agrees that (redacted) did not owe a hazardous waste facility fee for 1987-88.

Section 43452 of the Revenue and Taxation Code provides that:

“...no refund shall be approved by the board after three years from the date the taxes were due and payable for the periods for which the overpayment was made, or, with respect to determinations....after six months from the date the determinations become final, whichever period expires later, unless a claim therefore is filed with the board within that period.

(Redacted) argues that, if no facility fee was due for fiscal year 1987-88, then there was no “date the taxes were due and payable”, and there was no “overpayment”, since no payment at all was due. Therefore, Section 43452 does not apply, and there is no statute of limitations to bar its claim for refund. (Redacted) also argues that, if some limitation is applicable, it would not apply until the information it requested from DTSC and the Attorney General became available.

(Redacted)'s interpretation of Revenue and Taxation Code Section 43452 is not supported by the language of that statute. First, I reject the argument that there can be no "overpayment" unless some payment was due. If a person pays a fee which is not in fact due, that person has overpaid the entire amount of the fee. Second, the statute fixes a date after which a claim for refund is untimely. That date is three years from the date the taxes were due and payable for the period for which the overpayment was made (emphasis added). In other words, the overpayment was made for some period (quarterly, annual, etc.), and the claim for refund must be filed within three years of the due date which is relevant to that particular period. There is no reference to the date when the specific taxes or fees at issue in the claim for refund were due, but instead to the due date for the period for which the payment was mistakenly made.

If (redacted)'s argument was correct, the statute of limitations set forth in Revenue and Taxation Code Section 43452 would not apply if the feepayer could prove at any time, even tens of years after the payment was made, that the fee was not authorized by statute. This interpretation is contrary to the very purpose served by such statutes.

Statutes of limitation are enacted as a matter of public policy, to promote justice by preventing the assertion of stale claims after the lapse of a long period of time. Such claims are considered unfair because they are, for example, asserted after evidence has been lost, making it impossible or extremely difficult to prove the actual facts or make a fair presentation of the case. 43 Cal.Jr.3d 15. Statutes of limitations are construed liberally in order to effect their objectives and to promote justice. Glassell Development Co. v. Citizens National Bank (1923) 191 Cal. 375. However, (redacted)'s interpretation would have the opposite effect, in that it would allow the filing of claims for refund at any time, and long after parties could reasonably be expected to effectively present the issues involved.

(Redacted) provided no support, and I can find none, for its assertion that its discussions with the DTSC and the Attorney General's office toll the running of the statute of limitations.

Since (redacted)'s claim for refund was filed more than three years after April 1, 1988 (the due date for the facility fee for fiscal year 1987-88), the claim is barred by Section 43452. If (redacted) still seeks to litigate this matter, it can file a claim directly with the State Board of Control pursuant to Government Code Section 905.2, which provides for the filing of a claim for money against the state where such claim is not otherwise provided for by statute.

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

Janet Vining

JV:rar

Cc: Mr. E. L. Sorensen, Jr.
Mr. Lawrence A. Augusta