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Federal Government

The federal government, its agencies, and instrumentalities are liable for the quarterly solid waste fee imposed by Public Resources Code section 48000, but not for the annual solid waste fee imposed by Public Resources Code section 46801 (now repealed). Effective October 6, 1992, the federal government is liable for the payment of penalties imposed by Revenue and Taxation Code sections 45153 and 45306. 10/07/94.

Memorandum

To: Monte Williams, Administrator
Excise Taxes Division – MIC: 56

Date: October 7, 1994

From: Janet Vining
Supervising Staff Counsel

Subject: **Liability of Federal Government for
California's Solid Waste Fees**

The Legal Division has reviewed the relevant sections of the State's Public Resources Code and Revenue and Taxation Code to determine whether the federal government and its agencies and instrumentalities are liable for California's solid waste fees. It is our opinion that the federal government, its agencies and instrumentalities are liable for the quarterly solid waste fee imposed by Public Resources Code Section 48000, but not for the annual solid waste fee imposed by Public Resources Code Section 46801 (now repealed).

The annual solid waste fee was first imposed in Government Code Section 66799.49 as part of the Solid Waste Disposal Site Hazard Reduction Act of 1987 (Chapter 1319, Statutes of 1987, effective September 28, 1987). The fee, which was first collected for calendar year 1989, was paid by each operator of a solid waste landfill required to have a solid waste facilities permit, based on the tons of solid waste handled at each disposal site during the year. This annual fee was used to provide loan guarantees to solid waste landfill owners and operators, grants to cities and counties to establish household hazardous waste collection systems, and grants to local enforcement agencies to support solid waste landfill permit inspection and enforcement programs.

In 1989, before the first collection of the annual solid waste fee, the Legislature passed AB 939 (Chapter 1095, Statutes of 1989, effective January 1, 1990), which created the Integrated Waste Management Board and moved the statutory provisions imposing the annual solid waste fee from the Government Code to Section 46801 of the Public Resources Code. The fee was deposited in the Solid Waste Disposal Site Cleanup and Maintenance Account in the Solid Waste Management Fund, and was used to fund the same programs described above. In addition, AB 939 imposed a

quarterly solid waste fee, based on the solid waste disposal of at each disposal site during the quarter. This fee is deposited in the Integrated Waste Management Account in the Solid Waste Management Fund and is used to fund the Integrated Waste Management Board's regulation of solid waste landfills.

In 1993, the structure of the solid waste fees program changed significantly with the passage of AB 1220 (Chapter 656, Statutes of 1993, effective October 1, 1993), and AB 2136 (Chapter 655, Statutes of 1993). AB 1220 repealed the solid waste annual fee, and left in place the quarterly fee imposed by Public Resources Code Section 48000. Beginning with the effective date of AB 1220, the quarterly fee is used to fund the Integrated Waste Management Board's planning and enforcement activities (including landfill permitting, inspection and enforcement); The Board's waste reduction and resource recovery activities (including market development and research and public education); grants to local jurisdictions for their solid waste landfill inspection and enforcement activities; cleanup of solid waste sites (as well as the cleanup of solid waste at codisposal sites); inspections by regional quality control boards of solid waste landfills, their groundwater protection programs and remediation efforts; and market development loans.

Based on the proportion of the funds collected through the annual solid waste fee program which did not directly benefit the federal government, it is our opinion that the federal government, its agencies and instrumentalities, are not liable for the annual solid waste fee imposed by Government Code Section 66799.49 and, later, Public Resources Code Section 46801. However, it is further our position that the federal government, its agencies and instrumentalities, are liable for the quarterly solid waste fee, beginning January 1, 1990, since that fee is used primarily to fund the inspection and regulation of solid waste landfills (including those operated by the federal government) by the Integrated Waste Management Board, local jurisdictions, and regional water quality control boards.

The Board has previously determined that the federal government is not subject to interest on late paid fees. See Library of Congress v. Tommy Shaw (1986) 478 U.S. 310; New York State Dept. of Environmental Conservation v. U.S. Dept. of Energy (N.D., N.Y., 1991) 772 F. Supp. 91. However, beginning October 6, 1992 (the effective date of the Federal Facilities Compliance Act, P.L. 102-386, Title 42 U.S.C. §6961), the federal government is liable for the payment of the penalties imposed in Revenue and Taxation Code Section 45153 and 45306. Revenue and Taxation Code Section

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45155 authorizes the Board of Equalization to waive only the penalty imposed by Revenue and Taxation Code Section 45153 if the Board finds that a feepayer's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. Any federal agency or instrumentality which seeks to be relieved of a penalty must file a statement with the Board, under penalty of perjury, setting forth the facts upon which the federal agency or instrumentality bases the claim for relief.

I have sent the above analysis to Mjr. Jonathan Scharfen of the U.S. Marines and Ms. Mary Kay Faryan of the U.S. Navy, with copies of both letters to you.

Please contact me if you have any questions concerning this issue.

Janet Vining

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cc: Mr. Allan K. Stuckey
Mr. E. L. Sorensen, Jr.
Mr. Larry Augusta
Mr. Doug Shepherd
Ms. Susan Scott