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Fly-Ash

The removal or "mining" of fly ash several months after disposal at a disposal facility, to be distributed as a soil enhancement, does not exempt the fly ash from the fee. 3/05/98. (M99-1).

Memorandum

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

Date: March 5, 1998

From: Monica Gonzalez Brisbane
Tax Counsel

Subject: **Integrated Waste Management Fee – Fly Ash**

QUESTION PRESENTED:

You have requested a legal opinion concerning how the Integrated Waste Management (IWM) Fee would apply to the operators of non-hazardous wood waste landfills and their practice of “mining” fly ash.

FACTS:

According to your memorandum, several operators have claimed exemption from the IWM Fee based on the nature of their operations. Specifically, the operators deposit the waste, in this case fly ash, into the landfill and remove it several months later to distribute to local farmers for use as a soil enhancement. This practice is known as “mining”.

BRIEF ANSWER:

Based on the following discussion, while an exemption from the IWM Fee may be appropriate for the mining of fly ash for policy reasons, no such exemption currently exists. Any exclusion from the calculation of the fee or complete exemption would require legislation.

DISCUSSION:

Applicable statutes¹:

Section 48000: (a) Each operator of a solid waste landfill required to have a solid waste facility permit shall, in addition to the fee imposed pursuant to Section 46801, pay a fee quarterly to the State Board of Equalization based on all solid waste disposed of at each disposal site on or after January 1, 1990.

¹Unless otherwise stated, all statutory references are to the Revenue and Taxation Code.

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Section 40121: “Disposal facility” or “facility” means any facility or location where disposal of solid waste occurs.

Section 40120.1: “Disposal” has the same meaning as “solid waste disposal” as defined in Section 40192.

Section 40192: “Solid Waste disposal” or “disposal” means the final disposition of solid waste onto land, into the atmosphere, or into the waters of the state.

Pursuant to the statutes cited above, an operator of any facility or location where disposal of solid waste occurs is required to pay a quarterly fee. Disposal means the final disposition of solid waste onto land, into the atmosphere, or into the waters of the state. The only exception to this quarterly fee is for an operation that receives less than a monthly average of five tons per operating day of solid waste (Section 48006). Also, recycled materials removed from the waste stream and not disposed of in a solid waste landfill are not included for the purpose of assessing the quarterly fee (Section 48007).

“Solid waste” is defined at Section 40191 to mean, in pertinent part, “all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, and parts thereof, . . .” (emphasis added). The exceptions to the definition are not relevant to this discussion of fly ash. Fly ash clearly falls within the definition of a solid waste. Therefore, any final disposal of fly ash into a disposal facility requires the payment of a quarterly fee by the operator. The mining process described by the operators seeking an exemption from the fee does not fit into the exemption provision set forth in Section 48007 for recycled materials and inert waste because the fly ash is not removed from the waste stream and is disposed of in the landfill. Further, I assume that the landfills in question are receiving more than a monthly average of five tons per operating day, or the operators would be exempt from all fees.

Based on the foregoing fly ash disposed of in a disposal facility cannot be excluded from the assessment of the IWM Fee whether it is later removed or not. Any exclusion or exemption would require legislation.

MGB:es
Flyash.mem

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