



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/18/11	Bill No:	Assembly Bill 1351
Tax Program:	Underground Storage Maintenance Tank Fee	Author:	Logue
Sponsor:	BOE	Code Sections:	RTC 50113.1
Related Bills:		Effective Date:	01/01/12

BILL SUMMARY

This Board of Equalization (BOE) sponsored bill would allow the BOE to limit the period to three years for which a deficiency determination may be issued or adjusted with respect to a qualified absentee owner of an underground storage tank.

ANALYSIS

CURRENT LAW

Under existing law, Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code (RTC), the BOE is responsible for the collection and administration of the underground storage tank fee as specified in Article 5 of Chapter 6.75 of Division 20 of the Health and Safety Code. As specified and defined in the Health and Safety Code, the owner of an underground storage tank that contains petroleum products is required to pay a storage fee for each gallon of petroleum (including both gasoline and diesel) placed in an underground storage tank which he or she owns. "Owner" is defined as "the owner of an underground storage tank containing petroleum," which includes any agency or department of a city, county, or district, but does not include any agency or department of the state or federal government. In general, and as described in the Health and Safety Code, no person may own or operate an underground storage tank unless a permit for its operation has been issued by a local agency to the owner or operator of the tank.

As specified in RTC Section 50108.1, every person who is an owner of an underground storage tank for which a permit is required under the Health and Safety Code must register with the BOE. The owner must file a return with the BOE and remit the fees in accordance with the time period established by law. If the owner fails to register with the BOE and fails to file returns, the BOE is authorized to issue a notice of determination to such owners for periods as far back as eight years.

PROPOSED LAW

This bill would amend RTC Section 50113.1 to allow the BOE the flexibility to limit a determination to a three-year period, rather than an eight-year period, if the owner meets the criteria for a qualified absentee owner. In cases where a determination has been issued for failure to file a return for periods in excess of three years and the feepayer has petitioned the liability, the BOE may revise the liability to reflect a three-year period, rather than the period exceeding three years, up to a maximum of eight years, if the BOE finds the owner is qualified absentee owner.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

BACKGROUND

Underground storage tanks are located primarily at service stations and truck stops, and the owner of the underground storage tank(s) is usually the operator of the facility. Persons engaging in or conducting business as a seller at such locations are required to hold a Sales and Use Tax permit. Therefore, when the fee was enacted back in October 1989, the BOE mailed notices to Sales and Use Tax permit holders to reach the largest number of potential tank owners. Notification was also mailed to Environmental Fee and Fuel Taxes registrants.

Since that time the Special Taxes section has continued to conduct extensive outreach and investigation programs to locate and achieve compliance from previously unregistered underground storage tank owners. These efforts include the following:

- **BOE-5 Investigation Program-** Special Taxes (Compliance Branch) staff directly contact and investigate sales tax accounts with business and account characteristic codes indicating the possible presence of underground storage tanks, usually triggered by changes to registration records. Every new or updated sales and use tax registration of a gas station is investigated by staff for compliance with the underground storage tank program.
- **SCOP-** Statewide Compliance and Outreach Program – In conjunction with Sales and Use Tax Department staff, businesses in targeted areas are investigated for compliance with BOE programs by BOE field investigators. Businesses in the targeted areas with underground storage tanks are investigated for compliance with the provisions of the Fee Law. Non-compliant underground storage tank sites are referred to compliance staff for investigation and registration.
- **Field Audit Leads-** Each BOE audit completed at a location where underground storage tanks are present generates a report to staff. Each report is investigated to assure compliance with the fee program (AUD-506 Report).
- **CUPA Leads-** Compliance staff works cooperatively with local UST permitting agencies to assure uniform compliance, including attending CUPA events.
- **BOE Tax Evasion Hotline-** BOE has a process in place to accept and investigate tips on unregistered accounts, including underground storage tank accounts, from the general public.
- **State Water Resources Control BOE Leads-** All accounts seeking underground storage tank fee program reimbursement from the SWRCB are investigated to assure compliance with the fee program.
- **“Old” Fuel Taxes Division direct mail Newsletter-** All accounts registered for Special Taxes programs receive annual informational newsletters. The underground storage tank fee program is featured periodically in this publication.
- **Small Business Fairs-** Special Taxes staff have presented underground storage tank material at small business fairs throughout California, presenting material for and explaining requirements of our special taxes programs, including the underground storage tank maintenance fee program.
- **Tax Information Bulletins-** All accounts registered with the BOE’s Sales and Use Tax program receive a quarterly Tax Information Bulletin. The underground storage tank fee program has been featured a number of times in this publication.

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Although the BOE has acted in good faith in trying to relay information to persons required to report and pay the fee, there are still cases of *absentee* tank owners who claim they were never notified because they do not hold permits or licenses with the BOE. Absentee owners often lease their property and the underground storage tanks located on such property to another person who operates the service station or truck stop. In some instances, the operator subleases the property to another operator. Consequently, it was generally the operator of the service station or truck stop, i.e., the person who held the Sales and Use Tax permit, who received the BOE's notification rather than the owner of the underground storage tank. This has resulted in a hardship for many absentee tank owners who, by the time the BOE determines who owns the underground storage tanks, suddenly owe several years of back fees, interest, and penalties. Many absentee owners have difficulty paying such a determination because they often have no means of obtaining reimbursement for the fee due for past periods.

If a previously unregistered entity is discovered, Special Taxes (Compliance Branch) is again primarily focused on working cooperatively with the underground storage tank owner to gain voluntary compliance. If the BOE is unable to obtain a registration application from the owner of a particular delinquent UST, an ownership investigation is completed in cooperation with local permitting agencies to accurately identify the underground storage tank owner. Once an ownership determination is made, an involuntary registration is processed and the account enters our delinquent payment cycle for the missing fee returns.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the BOE and is intended to provide limited fee liability relief in those cases where the underground storage tank owner is found to be a qualified absentee owner.
- 2. This provision would provide only limited relief for a qualified absentee owner.** In general, in those cases where a qualified absentee owner failed to file returns, the BOE would be able to issue a deficiency determination for up to a maximum of eight years. If the BOE finds that the absentee owner meets the criteria for relief, then the BOE would be able to limit the deficiency determination to a three year period or re-determine an appealed determination to a three year period. In short, the BOE would only be able to provide relief for a maximum of five years, thereby continuing to hold the feepayer liable for a three year period.
- 3. The owner may not be the operator of a gas station, yet the owner is liable for the payment of the underground storage tank fee.** As explained in the background, despite the BOE's best efforts in attempting to identify, locate, and communicate with the owners of underground storage tanks that are subject to the fee, there are still cases in which the owner fails to register with the BOE to report and pay the underground storage tank fee. These cases generally involve an owner of the property where the underground storage tanks are located not being an operator of the gas station, or not having any ownership ties to the operator, or not having previous business experience or knowledge of the operating and licensing responsibilities associated with a gas station. Additionally, in these cases, the owner is the lessor of the property, with the gas station operator being the lessee and the operator being responsible for the payment of the Sales and Use tax. Ultimately, when the BOE identifies the owner and has to issue determinations for failure to file

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returns, the owner is unable to pay because they had not been collecting the Underground Storage Tank fee and they have no means of obtaining reimbursement for the fee due for past periods.

COST ESTIMATE

The BOE would not incur additional costs to administer this bill.

REVENUE ESTIMATE

Based upon a review of determinations issued during the past fiscal year, the estimated revenue loss for this measure is approximately \$50,000 per year.

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