

Amend Revenue and Taxation Code Section 50113.1 of the Underground Storage Tank Maintenance Fee Law to allow the Board of Equalization (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.

Source: Honorable Michelle Steel

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.

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 current 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 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.

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 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.

This Proposal

This proposal would 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.

Based upon a review of determinations issued during the 2009-10 fiscal year, the estimated revenue loss for this proposal is \$50,000 per year.

Section 50113.1 of the Revenue and Taxation Code is added to read:

50113.1. (a) Except in the case of fraud, intent to evade this part, or rules and regulations adopted pursuant to this part, or failure to make a report or return, every notice of a determination of an additional amount due shall be given within three years after the date when the amount was required to have been paid or the report or return was due, or within three years after the report or return was filed, whichever period expires later.

(b) Except as provided in subdivision (c), if in the case of failure to make a report or return, the notice of determination shall be mailed within eight years after the date the amount of the report or return was due.

(c) Notwithstanding subdivision (b):

(1) If the owner currently owns the underground storage tank and the board finds that the owner failed to make a report or return because he or she was a qualified absentee owner of an underground storage tank, as defined, then the notice of determination shall be mailed within three years after the date the amount was required to have been paid or the report or return was due.

(2) If the owner no longer owns the underground storage tank and the board finds that the owner failed to make a report or return because he or she was a qualified absentee owner of an underground storage tank, as defined, then the notice of determination shall be mailed within eight years

after the date the amount was required to have been paid or the report or return was due, but the notice of determination shall only include amounts due that arose during the owner's final three years of underground storage tank ownership.

(3) For purposes of this section, "qualified absentee owner" of an underground storage tank means all of the following:

(A) The owner was not the operator, as defined by Health and Safety Code Section 25299.20, of the underground storage tank system.

(B) The owner had no ownership interest in the person that was the operator of the underground storage tank system.

(C) The owner establishes that it did not know of, and could not have reasonably known of, the requirement to register with the board as an owner of an underground storage tank.

(D)(i) The board did not have contact with the owner of the underground storage tank regarding the requirement that the owner register with the board prior to the relevant time period described in paragraph (1) or (2).

(ii) If the board did have contact with the owner of the underground storage tank prior to the relevant time period described in paragraph (1) or (2), the owner is liable for the fee for the period beginning the date of that contact to the date the notice of determination was mailed.

(d)(1) Where the notice of determination was mailed pursuant to subdivision (b), paragraphs (1) and (2) of subdivision (c) shall only apply to notices of determination issued on or after January 1, 2012.

(2) Where the notice of determination was not mailed pursuant to subdivision (b), paragraphs (1) and (2) of subdivision (c) shall only apply when either of the following occurs on or after January 1, 2012:

(A) First contact is made between the board and the owner; or

(B) The board mails returns to the owner for the periods during which, up to eight years, the owner owned the underground storage tank.