

Add Section 50113.05 to the Underground Storage Tank Fee Law to shorten the statute of limitations to three years with respect to the period in which the Board may issue a deficiency determination to a qualified absentee owner of an underground storage tank.

Source: Fuel Taxes Division

Under existing law, the owner of an underground storage tank that contains petroleum products is required to pay a fee for each gallon of petroleum (including both gasoline and diesel) placed in an underground storage tank which he or she owns. The owner must file a return with the Board and remit the fees in accordance with the time period established by law. If the owner fails to register with the Board and fails to file returns, the Board is authorized to issue a notice of determination to such owners for periods as far back as eight years.

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, the Board 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.

Although the Board acted in good faith in trying to relay information to persons required to report and pay the fee, many *absentee* tank owners were not notified because they do not hold permits or licenses with the Board. Absentee owners generally lease their property and underground storage tanks located on such property to another person, who then operates the service station or truck stop. In some instances, the operator subleases the property to another operator. Therefore, the operator of the service station or truck stop who holds the Sales and Use Tax permit would have received the Board'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 Board determines who owns the underground storage tanks, suddenly owe several months or years of back fees, interest, and penalties. Many absentee owners have difficulty paying such a determination because they have not reimbursed themselves for the fee.

This proposal would allow the Board to issue a deficiency determination for a three-year period, rather than an eight-year period, if the absentee owner meets the criteria of a qualified fee payer. The criteria includes, but is not limited to, a fee payer who owns the tank, but does not operate the business with which the tank is associated, and a fee payer that has not been contacted by the Board regarding the fee during the period the fee payer was not registered.

Based upon a review of determinations issued during the last two fiscal years, the estimated revenue loss for this proposal is \$400,000 per year.

Section 50113.05 of the Revenue and Taxation Code is added to read:

50113.05. (a) Notwithstanding Section 50113.1, the period during which a deficiency determination may be mailed to a qualified fee payer is limited to three years after the 26th day of the calendar month following the quarterly period for which the amount is proposed to be determined. For the purposes of this section, a "qualified fee payer" is a person that meets all of the following conditions:

(1) The fee payer owns the underground storage tank or tanks, but does not operate the business with which the tank or tanks are associated.

(2) The fee payer has not previously registered with the board under Section 50108.1.

(3) During the period when the fee payer was not registered, the fee payer was not contacted by the board regarding the fee.

(4) As determined by the board, the fee payer's failure to file a return or failure to report or pay the fee or amount due required by law was due to reasonable cause and was not a result of negligence or intentional disregard of the law, or because of fraud or an intent to evade the provisions of this part.

(b) If the board or its designee finds that the fee payer's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the fee payer's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the fee payer shall be relieved of the penalties imposed pursuant to this part. Any fee payer seeking relief of penalty shall file a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.