



1 reported on the amended return of \$4,045.70. Claimants also filed late returns for the first quarter  
2 2005 through the second quarter 2007, reporting fees of \$53,005.90. Claimants did not timely pay the  
3 fees of \$57,051.60 (\$4,045.70 + \$53,005.90). In July 2008, the Sales and Use Tax Department  
4 received a request for a sales tax clearance related to claimants' sale of the gas station, and a levy was  
5 issued against the escrow account for the sale of the business for the USTM fees, penalties, and  
6 interest. The entire amount due was collected by levy.

7 Claimants request a refund of all amounts paid, contending that they were not obligated to pay  
8 the "insurance fee" for the underground storage tanks. Specifically, claimants assert that during the  
9 period of March 2005 through August 2007, they were "not insured and protected" by the State Board  
10 of Equalization. Claimants assert that the purpose of the fees is to protect and insure gas station  
11 owners from damages and leaks, and they question why they should have to pay for a service that was  
12 not rendered and whose coverage would not have been available if a leak had occurred. In addition,  
13 claimants state that they were not notified of the "Underground Tanks Protection Tax" when they  
14 applied for their seller's permit or when they took their first three sales and use tax returns to the  
15 district office for assistance in completing them.

16 It is undisputed that claimants owned the subject real property as well as the underground  
17 storage tanks for the periods at issue. Accordingly, claimants are liable for the fees at issue, even if  
18 they did not know of the obligation. (Cal. Code Regs., tit. 18, § 1212, subd. (d).) We note also that  
19 claimants received information sufficient to notify them of their obligation to report and pay USTM  
20 fees. Claimants' assertion that the USTM fee represented "insurance" that they did not receive and for  
21 which they should not have to pay is based on their misunderstanding of the fee and the purposes for  
22 which it is collected, and does not provide a basis to avoid liability for the fees. We find there was no  
23 overpayment.

24 **Issue 2:** Whether relief of the late-payment penalties is warranted. We find no basis to  
25 recommend relief.

26 Claimants filed a request for relief of the late-payment penalties, based on the same arguments  
27 raised regarding their liability for the fee, which we have rejected. Claimants do not articulate any  
28

1 reasonable cause of explanation for their failure to timely pay the fee. Accordingly, we find there is no  
2 basis to recommend relief of the penalties.

3 **Issue 3:** Whether relief of interest is warranted. We find no basis for relief.

4 Claimants filed a request for relief of interest in which they do not allege any specific delay on  
5 the part of a Board employee, but generally assert that they were not notified of the USTM fee until  
6 two-and-a half years after purchasing the business. From this assertion, we infer that claimants are  
7 arguing that they should not be liable for the interest because the Department did not timely notify  
8 them that the fee was due.

9 We find the Department did timely notify claimants of the USTM fee program, at the very  
10 beginning of the liability period, and at various times during the period at issue. Despite such  
11 notification, claimants failed to file returns and pay the applicable fees, and we find no evidence of any  
12 error or delay by the Department. Accordingly, we find no basis to recommend relief of interest.

13 **OTHER DEVELOPMENTS**

14 None.

15  
16 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28