

## 1 CALIFORNIA STATE BOARD OF EQUALIZATION

## 2 APPEALS DIVISION SUMMARY FOR BOARD HEARING

3 In the Matter of the Petition for Redetermination )  
 4 Under the Underground Storage Tank )  
 Maintenance Fee Law of: )  
 5 )  
 6 K.A.R.E.N. Oil Company, Inc. ) TK MT 44-043578  
 ) Case ID 339357  
 7 Petitioner )  
 ) Los Angeles, Los Angeles County

8 Type of Business: Owner of underground storage tanks

9 Audit Period: 10/1/97 - 9/30/05

10 <u>Protested Items</u>	<u>Disputed Amount</u>	
11 Underground Storage Tank Maintenance Fees	\$120,476	
12 Late payment penalty	\$ 12,039	
13 Relief of interest	Not specified	
	<u>Fee</u>	<u>Penalty</u>
14 As determined, protested	<u>\$120,475.93</u>	<u>\$12,038.87</u>
15 Proposed fee redetermination	\$120,475.93	
16 Interest (fee paid in full 1/3/06)	41,664.14	
Penalty for failure to timely pay	<u>12,038.87</u>	
17 Total fee, interest, and penalty	\$174,178.94	
Payments	<u>-163,018.47</u>	
18 Balance due	<u>\$11,160.47</u>	

## 19 UNRESOLVED ISSUES

20 **Issue 1:** Whether petitioner is liable for the assessed underground storage tank maintenance  
 21 fees. Petitioner, as the owner of the underground storage tanks, is liable for the fees.

22 Petitioner has owned real property in Long Beach, California since September 28, 1988, on  
 23 which it operated an ARCO-branded service station under seller's permit SR AA 014-748521, issued  
 24 June 1, 1989, and closed out effective December 30, 2005. A Vendor Use Fuel Tax Permit, FV AA  
 25 014-748522, was also issued June 1, 1989, and closed out effective June 30, 1995. Petitioner indicated  
 26 that three underground storage tanks (UST's) were originally installed on this property in 1950. In  
 27 July 1998, petitioner hired Bill's Service Station Maintenance, Inc (contractor) to replace the old  
 28 UST's with four new UST's with a capacity of 10,000 gallons each. The contractor's employee,

1 Stephon Mann, completed petitioner's application for a UST permit with the State Water Resources  
2 Control Board on July 31, 1998, signing for petitioner under the section for the tank owner's name and  
3 signature. The application contains a space for the Board of Equalization UST Storage Fee Account  
4 Number to be entered, but no number was listed on petitioner's completed application.

5 In mid-2004, petitioner opened an escrow for the sale of its gasoline station, which required the  
6 escrow officer to contact the Sales and Use Tax Department in order to secure a sales tax clearance.  
7 Consequently, on October 26, 2004, the Property and Special Taxes Department, Fuel Industry Section  
8 (Department) contacted petitioner regarding the reporting and payment of UST maintenance (USTM)  
9 fees and mailed an application package to petitioner. Petitioner submitted an application and the Board  
10 created an account on December 23, 2004. The Department sent USTM fee returns to petitioner on  
11 December 23, 2004, and August 9, 2005, for the period October 1, 1997, through June 30, 2005.  
12 Petitioner filed and paid timely returns for the period October 1, 2004, through June 30, 2005, but did  
13 not file returns for the period October 1, 1997, through September 30, 2004. As a result, the  
14 Department then used reports for prepaid sales tax to determine the number of gallons of gasoline  
15 purchased and received by petitioner during the audit period, finding that a total of 11,756,280 gallons  
16 were placed in the tanks during the audit period. The Department subtracted the number of gallons  
17 reported by petitioner for the period October 1, 2004, through June 30, 2005 (1,706,085) to obtain  
18 unreported gallons of 10,050,195.

19 Petitioner informed the Department that filing and paying the fee for the period for which  
20 returns were not filed would cause him to file for bankruptcy protection. Consequently, on  
21 November 15, 2005, the Department issued to petitioner a timely Jeopardy Determination for the  
22 period October 1, 1997, to September 30, 2005, for \$120,475.93 in USTM fees, plus applicable  
23 interest, and a penalty of \$12,038.87 for failure to timely pay the fees that were due. On November 24,  
24 2005, petitioner submitted a timely petition for redetermination, and by January 3, 2006, had fully paid  
25 the fees and interest, plus a portion of the penalty for failure to timely pay the fee, leaving a balance  
26 due for unpaid penalty of \$11,160.47.

27 Petitioner does not dispute that it is the owner of the tanks or protest the amount of gallons and  
28 fees determined for the periods in issue. However, petitioner contends it should not be held liable for

1 the fees because petitioner was not notified in a timely manner that returns were not being filed,  
2 resulting in the fee liability going unpaid for 15 years. Petitioner argues that the Department should  
3 have discovered petitioner's UST's and its failure to register for a USTM account or file returns at an  
4 earlier time. As support, petitioner refers to a statement made by Board employee Cherie McCormick  
5 in October 2004, to petitioner's representative, Mr. Michaeli, that "we probably missed you."  
6 Petitioner further contends the failure to make the payments was substantially due to the errors and  
7 omissions of a third party, the contractor who installed the UST's, upon whom petitioner allegedly  
8 relied to set up the account with the Board.

9 Petitioner also states that it reasonably believed any taxes due on its fuel purchases were paid  
10 by ARCO and that it did not know any additional taxes or fees were due because petitioner filed  
11 applications with the Board for a seller's permit and a fuel sales permit in 1989, filed a UST permit  
12 application with the State Water Resources Control Board in 1998, and believed sums for the state fuel  
13 excise tax, oil spill tax, and prepaid sales tax were regularly withheld by ARCO with each fuel delivery  
14 and paid over to the Board for petitioner's account. Petitioner further argues it acted in good faith, as  
15 evidenced by petitioner's payment of all required newly accruing fees since the account was opened  
16 and petitioner's contact with the Board that led to the discovery of the need for a USTM fee account.

17 Finally, petitioner argues that the Board is barred by the doctrines of equitable estoppel and  
18 laches from issuing a determination against petitioner for unreported and unpaid USTM fees because  
19 the Board knew, or should have known, that petitioner was continuously operating a gas station with  
20 UST's for over 15 years but failed to act within a reasonable time to inform petitioner of its obligation  
21 to file USTM fee returns with the Board. Petitioner again refers to the applications it filed with the  
22 Board and with the State Water Resources Control Board, and notes that, despite these various sources  
23 of information, the Department did not inform petitioner of the need to pay the USTM fee until mid-  
24 2004, after petitioner had opened an escrow for the sale of its gasoline station.

25 We conclude that petitioner's arguments are without merit. The USTM fee is imposed upon  
26 the owner of underground storage tanks, for each gallon of petroleum placed into the tank. (Health &  
27 Safety Code, § 25299.41; Cal. Code Regs., tit. 18, § 1212, subds. (a), (d).) Every owner of an  
28 underground storage tank containing petroleum for which a permit is required must register with the

1 Board. (Rev. & Tax. Code, § 50108.1.) An owner is liable for the fee even though the owner claims  
2 he or she did not know the fee was due. (Cal. Code Regs., tit. 18, § 1212, subd. (d).)

3 Here, petitioner had been informed regarding USTM fee law through information in the Tax  
4 Information Bulletins and notices regularly issued to holders of seller's permits under the Sales and  
5 Use Tax Law, in March 1991, June 1994, June 1996, September 1996, December 1996, September  
6 1998, March 1999, December 2000, March 2003, and June 2004, and in special notices issued in June  
7 1994 and November 1998. We note that the June 1994 notice is significant because it was specifically  
8 sent to businesses coded as sellers of petroleum products, such as petitioner, and exclusively addressed  
9 the USTM fee. Similarly, the June 1994 Tax Information Bulletin contains a section beginning with  
10 the following language, in bold type: "**Do You Own or Operate an Underground Storage Tank?**"  
11 and then proceeds to set forth the requirements to register with the Board and pay the quarterly fee for  
12 each gallon of petroleum products stored in the tank. Petitioner should have received these bulletins  
13 and notices and therefore should have been aware of the requirements to register and pay the fee.

14 With respect to petitioner's argument that the contractor who installed the UST's should have  
15 set up the account with the Board or that petitioner reasonably believed any taxes due on its fuel  
16 purchases (including USTM fees) were paid by ARCO, petitioner was the owner of the UST's, and  
17 thus, was ultimately responsible for ensuring that it registered a USTM fee account with the Board,  
18 filed returns, and paid the USTM fees. Reliance on the advice or representations of third parties does  
19 not provide a basis to relieve petitioner of liability for the fees assessed.

20 With respect to petitioner's argument that the Board is barred by the doctrines of equitable  
21 estoppel and laches, these are both equitable defenses and can only be asserted in a suit in equity.  
22 Since the Board lacks equity powers and instead is bound by statute, we find that these defenses are  
23 inapplicable in this proceeding. The Department issued the jeopardy determination within the  
24 applicable statute of limitations pursuant to Revenue and Taxation Code section 50113.1. Thus,  
25 petitioner's contention that the Board waited too long to issue the determination is without merit.

26 **Issue 2:** Whether the 10-percent failure-to-pay penalty should be relieved. We conclude there  
27 is no basis for relief of the penalty.  
28

1           Petitioner submitted a request for relief of the penalty, substantially reiterating its arguments  
2 that were made in protest of the fee liability. The penalty was imposed because petitioner failed to file  
3 returns and pay the fees in a timely manner. We find that the Department took adequate steps to  
4 inform petitioner of its reporting obligations. Petitioner was responsible for obtaining all of the  
5 necessary permits and paying all of the required fees and taxes due from the operation of its business.  
6 Thus, it was petitioner's failure, not the Department's, that led to the imposition of the penalties at  
7 issue. Therefore, we recommend no relief.

8           **Issue 3:** Whether interest on the fee liability should be relieved. We find that relief is not  
9 warranted.

10           Section 50112.4 empowers the Board, in its discretion, to relieve interest imposed on a person  
11 where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an  
12 employee of the Board acting in his or her official capacity. An error or delay is deemed to have  
13 occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act  
14 by, the petitioner. Any person seeking such relief must file with the Board a statement under penalty  
15 of perjury setting forth the facts on which the claim for relief is based, and any other information  
16 which the Board may require. (Rev. & Tax. Code, § 50112, subd. (c).) The Board may grant relief  
17 only for interest imposed on fee liabilities that arise during taxable periods commencing on or after  
18 January 1, 2000. Petitioner has submitted a request for relief of interest, presenting the same  
19 arguments it made in support of its request for relief of penalty.

20           The Department did not discover that petitioner was the owner of UST's and therefore  
21 responsible for USTM fees until mid-2004. Thereafter, on October 26, 2004, the Department  
22 contacted petitioner regarding the reporting and payment of UST maintenance fees and mailed an  
23 application package to petitioner. We find that this delay of only a few months does not represent an  
24 unreasonable delay by an employee of the Board. Additionally, the Board has made significant efforts  
25 to inform taxpayers via the Tax Information Bulletins of the need to register for a USTM fee account  
26 and to pay the quarterly USTM fee. Therefore we find that the failure to pay the fees is due is not due  
27 to any unreasonable error or delay by an employee of the Board and we recommend no relief.  
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**OTHER DEVELOPMENTS**

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None.

Summary prepared by Rey Obligacion, Retired Annuitant