

## 1 CALIFORNIA STATE BOARD OF EQUALIZATION

## 2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Administrative Protest )  
 4 Under the Underground Storage Tank )  
 Maintenance Fee Law of: )  
 5 ) Account Number TK MT 44-043058  
 6 HAMID MAGHSOUDI AND GHAZAL VALIYEE ) Case ID 438138  
 7 Feepayer )  
 Woodland, Yolo County

8 Type of Business: Owner of underground storage tanks

9 Liability period: 10/02/03 – 09/09/04

10 Item Disputed Amount

11 Unreported fees \$7,682  
 12 Failure to file penalty \$ 768  
 13 Finality penalty \$ 768  
 Relief of interest \$5,318

	<u>Tax</u>	<u>Penalty</u>
14 As determined	\$11,733.90	\$1,173.39
15 Finality penalty		1,173.39
16 Post-D&R adjustment	<u>- 4,052.31</u>	<u>- 810.46</u>
Adjusted determination	<u>\$ 7,681.59</u>	<u>\$1,536.32</u>
17 Fees, as adjusted	\$ 7,681.59	
18 Interest through 07/25/12	5,318.25	
Failure to file penalty	768.16	
Finality penalty	<u>768.16</u>	
19 Total tax, interest, and penalty	<u>\$14,536.16</u>	
20 Monthly interest beginning 07/26/12	<u>\$ 38.41</u>	

21 **UNRESOLVED ISSUES**

22 **Issue 1:** Whether feepayer is liable for the underground storage tank maintenance fees. We  
 23 find it is liable for the fees, as adjusted in the adjusted Field Billing Order dated July 15, 2010.

24 Feepayer owned real property and three underground storage tanks (UST) from October 2,  
 25 2003, through September 9, 2004. During this period, there were three different operators of the gas  
 26 station located on the property, Hamid Maghsoudi, a sole proprietor (October 2, 2003, through  
 27 December 2003), Hamid Maghsoudi and Shahram Shahnazi, a partnership (January 1, 2004, through  
 28 March 31, 2004), and Shahram Shahnazi, a sole proprietor (April 1, 2004, through September 9, 2004).

1 When Mr. Shahnazi closed his seller's permit, the Sales and Use Tax Department informed the Fuel  
2 Industry Section of the Property and Special Taxes Department (Department) that there appeared to be  
3 no UST maintenance fee account associated with the property or the UST's. The Department obtained  
4 information from the County of Yolo showing that feepayer was the legal owner of the real property,  
5 but there was no UST Permit Application on file for the property. Therefore, the Department sent a  
6 registration packet to feepayer on January 12, 2004, but feepayer did not register as a UST owner or  
7 pay the maintenance fees. Consequently, the Department registered feepayer with a UST maintenance  
8 fee account, effective October 2, 2003. It closed the account effective September 9, 2004, after Mr.  
9 Shahnazi notified the Department that he had purchased the real property. The Department used  
10 reports filed by the operators of the station with their sales and use tax returns to establish the number  
11 of gallons placed into feepayer's UST's during the liability period, and it adjusted the number of  
12 gallons in an adjusted Field Billing Order, based on a sales and use tax audit of Mr. Shahnazi.

13 Feepayer does not dispute that it owned the real property or the subject UST's and does not  
14 dispute the established number of gallons of fuel placed into the UST's. Feepayer contends that it is  
15 not liable for the fees because, when it sold the real property to Mr. Shahnazi on September 9, 2004,  
16 the purchaser obtained a certificate of tax clearance from the Board, which feepayer considers evidence  
17 that it owed no taxes or fees to the Board for the liability period. Feepayer also asserts that it did not  
18 know it was required to pay UST maintenance fees, and it believed that the fuel suppliers were  
19 responsible for the fees. In addition, feepayer states it cannot afford to pay the liability.

20 As the owner of the UST's, feepayer is liable for the associated UST maintenance fees related  
21 to the gallons of fuel placed in the tanks. (Health & Safety Code, § 25299.41; Cal. Code Regs., tit. 18,  
22 § 1212, subd. (a).) The certificate of tax clearance issued to Mr. Shahnazi does not relate to the unpaid  
23 UST maintenance fees in any way, for several reasons: (1) the certificate pertained only to Mr.  
24 Shahnazi's purchase of the business, not to the purchase of the real property or UST's; (2) the liability  
25 for the fees derives from feepayer's ownership of the real property and did not arise in connection with  
26 any seller's permit or the operation of the gas station; (3) the certificate clearly states that it was issued  
27 to the buyer, and it does not relieve the seller from any unpaid taxes or fees owed to the Board; and (4)  
28 feepayer was not the seller of the business. An owner of a UST is liable for the fee even though the

1 owner claims he or she did not know the fee was due. (Cal. Code Regs., tit. 18, § 1212, subd. (d).) We  
2 note also that Mr. Maghsoudi held a seller's permit from December 1971 through November 2011, and  
3 thus received numerous Tax Information Bulletins and notices explaining the provisions of the UST  
4 Maintenance Fee Law. Nor is there any provision in the UST Maintenance Fee Law that provides for  
5 an adjustment because of financial hardship. Thus, we find feepayer is liable for the UST maintenance  
6 fees, and no further adjustment is warranted. We have encouraged feepayer to contact the Board's  
7 Settlement and Offer in Compromise Departments.

8 **Issue 2:** Whether relief of the failure-to-file and finality penalties is warranted. We find no  
9 basis to recommend relief.

10 Since feepayer did not register as a UST owner or file returns and did not timely pay the  
11 determination, a failure-to-file penalty and a finality penalty have been added. The amount of each  
12 penalty, as adjusted, is \$768.16. Feepayer has requested relief of the penalties on the basis that it is not  
13 liable for the fees, citing the same arguments addressed under Issue 1. Since feepayer has not  
14 explained why it believes that its failure to file returns or to timely pay the determination was due to  
15 reasonable cause, we find there is no basis to recommend relief.

16 **Issue 3:** Whether relief of interest is warranted. We find relief is not warranted.

17 Feepayer has submitted a request for relief of interest, asserting that it is entitled to relief  
18 because it is not liable for the fees, for the reasons addressed under Issue 1. However, petitioner has  
19 not stated any basis for relief authorized by statute. We therefore find we have no basis to recommend  
20 relief of interest.

21 **OTHER MATTERS**

22 None.

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24 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III  
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