



1 of the lease agreement with one of the operators. Petitioner also argues that the audited number of  
2 gallons is overstated because it includes fuel delivered to other stations operated by one of the lessees.

3 The USTM fee is imposed upon the owner of underground storage tanks, for each gallon of  
4 petroleum placed into the tank. (Health & Safety Code, § 25299.41; Cal. Code Regs., tit. 18, § 1212,  
5 subds. (a), (d).) There is a rebuttable presumption that the owner of the real property is the owner of  
6 the UST located on the property, even if the property is leased to another person, and this presumption  
7 may be overcome by showing that ownership of the tanks rests with someone other than the real  
8 property owner. (Cal. Code Regs., tit. 18, § 1205.)

9 Petitioner has not presented evidence that anyone other than petitioner installed and owned the  
10 UST's at issue, or that the ownership of the UST's was ever transferred to another person. In that  
11 regard, the one lease agreement petitioner provided contains no reference to the ownership of the  
12 UST's and thus does not rebut the presumption that petitioner owns the UST's. In fact, on a Unified  
13 Program Consolidated Form Underground Storage Tanks (Form A) and an application for a USTM fee  
14 account, petitioner stated that he is the owner of the UST's. Accordingly, we find that petitioner, as  
15 the owner of the UST's, is liable for USTM fee.

16 With respect to petitioner's assertion that the number of gallons of fuel placed in the UST's is  
17 overstated, the Department found that the corporate officers of one of the lessee/operators did operate  
18 two other service stations. However, those stations were operated through two separate corporations,  
19 with each corporation holding separate sales and use tax permits and reporting prepaid sales tax  
20 amounts on fuel deliveries on those separate accounts during the audit period. We have reviewed the  
21 audits of petitioner and the lessee and find no evidence that the audited number of gallons placed in the  
22 UST's owned by petitioner included fuel that was actually delivered to other stations. Although we  
23 provided an opportunity for him to do so, petitioner has provided no additional documentation. Thus,  
24 we recommend no adjustment to the audited number of gallons.

### 25 OTHER DEVELOPMENTS

26 None.

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