

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION SUMMARY FOR BOARD HEARING**

In the Matter of the Claim for Refund Under the )  
Underground Storage Tank Maintenance Fee Law of: )  
SAHAND ENTERPRISES, INC. ) Account Number: TK MT 44-046334  
) Case ID 440941  
)  
Claimant ) Fresno, Fresno County

Type of Business: Operator of underground storage tanks

Claim Period: 01/28/05 - 03/31/07

<u>Item</u>	<u>Amount of Claim</u>
Fees paid in error	\$37,073

**UNRESOLVED ISSUES**

**Issue:** Whether claimant is entitled to a refund of the Underground Storage Tank (UST) fees that it paid based on its assertion that it did not own the UST's and thus paid the fees in error. We conclude that the claim for refund should be denied.

Claimant has operated a gasoline station in a location it leases from Headliner Shopping Center, LLC (Headliner). Headliner owns the two UST's on the property, and as the owner, obtained a UST permit number, TK MT 44-044212. The application form for the UST permit shows the business location's address and all correspondence and quarterly UST returns were thus mailed to the business location. Claimant filed UST returns under Headliner's name and account number. All of the UST returns were signed by claimant's accountant for the period in issue, except for the first quarter 2006 UST return, which was signed by claimant's president. Since the UST returns were filed under Headliner's account number, the Property and Special Taxes Department (Department) applied all filings and payments to Headliner's account.

Starting with the second quarter 2007, claimant discontinued filing UST returns. Subsequently, on October 19, 2007, claimant filed a claim for refund alleging that it paid the UST fees in error and the fees were actually due from Headliner because Headliner owns the UST's. Claimant filed a declaration signed under penalty of perjury stating that it mistakenly believed it was responsible for the fees based on Headliner's misrepresentation and it had paid the fees on that basis, not on behalf of

1 Headliner. Claimant also argues that California Code of Regulations, title 18, section (Regulation)  
2 1213 provides that the operator may pay the fee on the owner's behalf, but only if both parties file  
3 notarized documents with the Board. Claimant asserts that such documents were not filed with the  
4 Board, and therefore the fees it paid were erroneously collected and are subject to refund.

5 Health and Safety Code section 25299.41 requires every owner of a UST to obtain a permit to  
6 own or operate the UST and to pay a storage fee to the Board for each gallon of petroleum placed in  
7 the UST. Regulation 1212, subdivision (a), provides that the UST owner is liable for the fee even if  
8 the owner and operator have entered into an agreement that requires the operator to pay the fee to the  
9 Board. Thus, we agree with claimant that Headliner is liable for the UST fees regardless of the  
10 language in the lease contract to the contrary. However, the lease contract requires claimant to file the  
11 UST returns in Headliner's name and pay the fees, and claimant complied with such provision. Thus,  
12 claimant knowingly and intentionally paid the fees on Headliner's behalf. Although Headliner did not  
13 report or pay the fees itself, the Department had no reason to pursue Headliner, since the returns were  
14 filed and paid in Headliner's name.

15 For the refund to be granted, Revenue and Taxation Code section 50139 requires that the fees  
16 must have been paid more than once, or must have been erroneously or illegally collected or computed.  
17 Here, the fees have only been paid once, and the Department did not erroneously or illegally collect the  
18 fees since claimant voluntarily paid them. The only basis under which claimant seeks the refund is a  
19 dispute over the terms of the lease agreement, and that dispute does not involve the Board. Since  
20 claimant knowingly and voluntarily paid the fees at the time the UST returns were filed, we find there  
21 is no basis to grant the refund. Based on the foregoing, we recommend that the claim for refund be  
22 denied.

### 23 OTHER DEVELOPMENTS

24 None.

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26 Summary prepared by Rey Obligacion, Retired Annuitant  
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