

1 property are responsible for the fees pursuant to the lease agreements. Petitioner has provided a copy
2 of the lease agreement with one of the operators. Petitioner also argues that the audited number of
3 gallons is overstated because it includes fuel delivered to other stations operated by one of the lessees.

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

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

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

26 **POST HEARING DEVELOPMENTS**

27 At the Board hearing, petitioner asserted that there was an addendum to one lease stating that
28 the lessee was the owner of the UST's, and the Board granted additional time for petitioner to provide

1 a copy of that addendum. After the Board hearing, petitioner provided a copy of Addendum A to the
2 lease, dated February 16, 2006, which states, “Under the terms of the lease ownership of underground
3 storage tanks located on the premises is transferred to Michael Stephenson and Capital Investments.”
4 The document also specifies that Michael Stephenson will be liable for all applicable fees and taxes,
5 including the underground storage tank fees. If Addendum A were an authentic document, the
6 Department would agree that petitioner does not owe the fee for the period July 1, 2006 (the beginning
7 of the audit period) through June 13, 2008 (the end of the lease period). However, the Department
8 disputes the authenticity of Addendum A. The Department asserts that Mr. Stephenson’s signatures on
9 other available documents look similar to one another, while the purported signature of
10 Mr. Stephenson on Addendum A is distinctly different. We have reviewed the various signatures, and
11 we find that there appears to be no similarity between the signature on Addendum A and the signatures
12 on other documents. Accordingly, we find that Addendum A is not an authentic document. Our
13 conclusion thus remains that petitioner is liable for the UST maintenance fees for the entire audit
14 period, and we therefore recommend that the petition be denied.

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