

## 1 CALIFORNIA STATE BOARD OF EQUALIZATION

## 2 APPEALS DIVISION FINAL ACTION SUMMARY

3 In the Matter of the Petition for )  
 4 Redetermination Under the Underground )  
 Storage Tank Maintenance Fee Law of: )  
 5 MALVINDER SONNY MATHARU ) Account Number: TK MT 44-040996  
 6 Petitioner ) Case ID 515190  
 ) Thousand Oaks, Ventura County

7  
 8 Type of Business: Owner of underground storage tanks

9 Audit period: 07/01/06 – 12/31/08

10 <u>Item</u>	<u>Disputed Amount</u>
11 Unreported underground storage tank maintenance fees	\$14,066
12 Fees, as determined and protested	\$14,065.97
Interest through 08/25/12	<u>5,191.57</u>
13 Total tax and interest	<u>\$19,257.54</u>
14 Monthly interest beginning 08/26/12	<u>\$ 70.33</u>

15 The Board held a hearing regarding this matter on February 1, 2012, granting petitioner 30 days  
 16 to provide additional records and the Property and Special Taxes Department (Department) 30 days to  
 17 respond. This appeal was then scheduled for decision on June 26, 2012, but the Board provided the  
 18 Department additional time to attempt to contact Mr. Michael Stephenson so that he could confirm or  
 19 deny that he signed the lease addendum proffered by petitioner after the Board hearing. As discussed  
 20 under Post Hearing Developments, we conclude that no adjustment is warranted based on the lease  
 21 addendum.

22 **UNRESOLVED ISSUE**

23 **Issue:** Whether petitioner is liable for the fees assessed. We find that petitioner is liable as the  
 24 owner of the underground storage tanks, and that no adjustment is warranted.

25 Petitioner purchased real property with a gas station and installed three underground storage  
 26 tanks (UST) on the property. During the audit period, petitioner leased the property and service station  
 27 to two different operators. The Department used information regarding the amounts of sales tax the  
 28 operators prepaid to their suppliers to determine that 2,103,174 gallons of petroleum products had been

1 placed into the UST's during the audit period. Since petitioner had reported 1,098,463 gallons of  
2 petroleum products on its Underground Storage Tank Maintenance (USTM) Fee returns, the  
3 Department found that 1,004,711 gallons (2,103,174 – 1,098,463) had not been reported.

4 Petitioner contends he should not be held liable for the fees because he did not operate the gas  
5 stations or the UST's during the audit period. He asserts that the operators to whom he leased the  
6 property are responsible for the fees pursuant to the lease agreements. Petitioner has provided a copy  
7 of the lease agreement with one of the operators. Petitioner also argues that the audited number of  
8 gallons is overstated because it includes fuel delivered to other stations operated by one of the lessees.

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

15 The one lease agreement petitioner provided contains no reference to the ownership of the  
16 UST's and thus does not rebut the presumption that petitioner owns the UST's. Except as discussed  
17 under Post Hearing Developments, petitioner has presented no evidence that anyone other than  
18 petitioner installed and owned the UST's at issue, or that the ownership of the UST's was ever  
19 transferred to another person. In fact, on a Unified Program Consolidated Form Underground Storage  
20 Tanks (Form A) and an application for a USTM fee account, petitioner stated that he is the owner of  
21 the UST's.

22 With respect to petitioner's assertion that the number of gallons of fuel placed in the UST's is  
23 overstated, the Department found that the corporate officers of one of the lessee/operators did operate  
24 two other service stations. However, those stations were operated through two separate corporations,  
25 with each corporation holding separate sales and use tax permits and reporting prepaid sales tax  
26 amounts on fuel deliveries on those separate accounts during the audit period. We have reviewed the  
27 audits of petitioner and the lessee and find no evidence that the audited number of gallons placed in the  
28 UST's owned by petitioner included fuel that was actually delivered to other stations. Although we

1 provided an opportunity for him to do so, petitioner has provided no additional documentation. Thus,  
2 we recommend no adjustment to the audited number of gallons.

### 3 POST HEARING DEVELOPMENTS

4 At the Board hearing, petitioner asserted that there was an addendum to its lease with Capital  
5 Investments (USA), Inc. under which ownership of the tanks was transferred to the lessee, based on  
6 which the lessee should be liable for the fees for the period July 1, 2006, through June 13, 2008. The  
7 Board granted additional time for petitioner to provide a copy of that addendum. After the Board  
8 hearing, petitioner provided a copy of Addendum A to the lease, dated February 16, 2006, signed on  
9 behalf of the lessee by Mr. Michael Stephenson. The Department agrees that, if the addendum were  
10 authentic, petitioner would not owe the fee for the period July 1, 2006 (the beginning of the audit  
11 period) through June 13, 2008 (the end of the lease period). However, the Department disputes the  
12 authenticity of Addendum A. The Department compared the signature purported to be that of  
13 Mr. Stephenson on the addendum with other signatures of Mr. Stephenson in the Board's records, and  
14 concluded that the signature on the addendum was not authentic. We reviewed the signatures, and  
15 agreed that the signature on the addendum purported to be that of Mr. Stephenson is not actually the  
16 signature of Mr. Stephenson. When the Board considered this matter in June 2012, we confirmed that  
17 no attempt had been made to contact Mr. Stephenson and we agreed that an attempt at contacting him  
18 should have been made. The Board allowed additional time for the Department to do so.

19 The Department made attempts to contact Mr. Stephenson by telephone. Although the  
20 Department did call a telephone number that apparently is still used by Mr. Stephenson and was able to  
21 leave a voice mail message for him, Mr. Stephenson did not return the call. The Department then sent  
22 a letter to Mr. Stephenson dated July 6, 2012, by certified mail, return receipt requested. The receipt  
23 was returned to the Department indicating that Mr. Stephenson received the letter. The letter included  
24 a copy of the addendum and asked Mr. Stephenson to complete a form indicating whether he  
25 acknowledges or does not acknowledge signing the addendum. He completed and returned the form,  
26 indicating that he does not acknowledge signing the addendum. This response confirms our  
27 conclusion based on the disparity between the signature on the addendum and the other signatures of  
28 Mr. Stephenson in the Board's records (all of which we believe *are* authentic). Accordingly, we find

1 that the addendum is not an authentic document. Since petitioner has produced no valid evidence that  
2 ownership of the UST's was transferred to Capital Investments (USA), Inc., we conclude that  
3 petitioner was the owner of the UST's and is liable for USTM fee. We therefore recommend that the  
4 petition be denied.

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

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