

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matter of the Administrative Protest Under)
the Underground Storage Tank Maintenance Fee)
Law of:)
AZAD AMIRI AND NASSRIN AMIRI) Account Number: TK MT 44-041532
Case ID 313034
Feepayers) Concord, Contra Costa County

Type of Business: Ownership of underground storage tanks

Audit Period: 10/1/00 – 12/31/03

<u>Item</u>	<u>Disputed Amounts</u>	
Underground storage tank maintenance fees	\$22,498	
Finality penalty	\$ 2,250	
	<u>Fee</u>	<u>Penalty</u>
As determined, protested	\$24,074.32	\$2,407.44
Penalty added when liability became final		2,407.43
Adjustments: Property and Special Taxes Department ¹	- 1,576.56	- 315.33
Appeals Division	<u>0.00</u>	<u>- 2,249.77</u>
Protested fee and penalty	<u>\$22,497.76</u>	<u>\$2,249.77</u>
Tax liability	\$22,497.76	
Interest through 3/25/09	14,854.42	
Finality penalty	<u>2,249.77</u>	
Total fee, interest, and penalty	<u>\$39,601.95</u>	
Monthly interest beginning 3/26/09	<u>\$149.99</u>	

UNRESOLVED ISSUES

Issue 1: Whether feepayers have established that they did not own the underground storage tanks (UST's), and therefore are not liable for the underground storage tank maintenance (USTM) fees. We conclude that feepayers owned the UST's and are thus liable for the fees.

Feepayers were corporate officers of Ameri Oil Company, Inc. (Ameri), which owned a mini-mart gas station, located on feepayers real property. On May 31, 2000, Ameri sold the mini-mart gas

¹ Adjustments pursuant to a reaudit performed after the Notice of Determination was issued.

1 station to Narasimha Rao Palagummi. However, the UST's and real property was not included in that
2 sale. Rather, feepayers leased the real property to Mr. Palagummi for a 10-year term, and the lease
3 agreement did not include a provision for the transfer of ownership of the UST's.

4 In January 2002, feepayers submitted a UST permit application along with a notarized
5 Statement of Underground Storage Tank Owner authorizing the Board to send notices and returns to
6 Joel Sanchez, the "tank operator." The statement was signed by Azad Amiri as the "tank owner." The
7 Department returned the application to feepayers because Nassrin Amiri's information was missing.
8 When feepayers did not resubmit the application, the Department registered feepayers as co-owners.
9 On April 22, 2005, the Department issued a Notice of Determination (NOD) to feepayers because
10 USTM fee returns were not filed for the period 4Q00 through 3Q02 and 2Q03. Since the co-ownership
11 is an entity, the Department sent copies of the NOD to Azad Amiri, Nassrin Ameri, and to the
12 partnership of Azad Amiri, et al.

13 Feepayers contend that they are not liable for the fee because the UST's were sold to
14 Mr. Palagummi, and the NOD was not issued properly because it was issued to a non-existent
15 partnership. Alternatively, feepayers contend that Mr. Ameri is only potentially liable through
16 January 22, 2003, because the Judgment for Dissolution changed ownership of the real property.
17 Feepayers argue that they never were in a partnership, and when they divorced, they were no longer
18 co-owners.

19 A UST owner is liable for payment of the USTM fee regardless of whether the owner is the
20 operator of the UST, and is liable for the fee even if the owner and operator have entered into an
21 agreement that requires the operator to pay the fee to the Board. (Cal. Code Regs., tit. 18, § 1212,
22 subd. (d).) There is a rebuttable presumption that the owner of the real property is the owner of the
23 UST, even if the property was leased to another person. (Cal. Code Regs., tit. 18, § 1205.) Here,
24 county property records show that feepayers were co-owners of the real property during the audit
25 period. The judgment of dissolution submitted by feepayers is silent as to any division of property,
26 and contains no language that indicates any change of ownership of the property. Therefore, we find
27 that feepayers were the owners of the real property for the entire audit period. As the owners of the
28 real property, feepayers are presumed to be the owners of the UST located on the property.

1 There is no evidence that feepayers sold the UTS's to Mr. Palagummi. The lease agreement
2 does not contain any language indicating that title to the tanks was vested in Mr. Palagummi. The only
3 language in the lease that relates to the UST is section 4.7, which provides that the tenant is required to
4 pay all California USTM fees as they become due and to provide the landlord with a copy of the
5 quarterly tax return submitted with the USTM fee payment. This section is consistent with the
6 conclusion that the ownership of the tanks did not transfer to Mr. Palagummi. We note that feepayers
7 submitted a document they assert was attached to the lease as "Exhibit H" that shows two tanks
8 included in the equipment "being Sold to Lessee." However, Mr. Palagummi denied receiving a copy
9 of "Exhibit H" with his original lease, and the escrow company did not have an "Exhibit H" with its
10 copy of the lease. Furthermore, the lease itself lists only exhibits A to G, and does not indicate that
11 any "Exhibit H" was part of the agreement. We note also that when feepayers applied for a UST
12 permit in January 2002, they indicated that they were the owners of the UST's. We thus conclude that
13 the document submitted as "Exhibit H" was *not* an exhibit to the lease between feepayers and
14 Mr. Palagummi and that feepayers were the owners of the UST's during the audit period.

15 We are not persuaded by feepayers' argument that the NOD was improperly issued. Here, the
16 property was purchased and owned by feepayers as co-owners, essentially meaning that a partnership
17 was formed. Although feepayers' marital status was terminated on October 11, 2002, feepayers
18 continued to own the property as co-owners. Therefore, the partnership continued to exist.
19 Consequently, the NOD was properly issued to the partnership. Additionally, all parties received
20 individual notices because feepayers as co-owners are collectively and individually liable for any
21 liability that is incurred. Therefore, the NOD was properly issued to feepayers and all parties received
22 proper notice.

23 **Issue 2:** Whether feepayers have established reasonable cause to relieve the finality penalty.
24 We conclude there is no basis for relief of the penalty.

25 On June 18, 2008, feepayers filed a declaration under penalty of perjury requesting relief from
26 the penalty because they did not receive any notices that the account was delinquent. However, the
27 NOD dated April 22, 2005 was sent to feepayers' address on record and was not returned to the Board
28 as undeliverable. The feepayers sent a letter in response to the NOD protesting their liability, which

1 proves that feepayers received the NOD. Although the letter was dated May 20, 2005, the envelope
2 was postmarked May 26, 2006, which was after the 30-day period for the filing of a timely petition for
3 redetermination. However, the response, even if a few days late, does show that, contrary to the
4 statement in their request for relief, feepayers did receive the NOD. Since feepayers have not
5 established that their failure to submit a timely petition or to pay the amount due was caused by
6 circumstances beyond their control, we recommend that relief from the penalty be denied.

7 **RESOLVED ISSUE**

8 The Department assessed the negligence penalty because feepayers failed provide adequate
9 records to the Department. However, there is no evidence that feepayers had any records to provide
10 because the lessees were the operators and, presumably, had all the relevant records. Thus, we find
11 that the Department has failed to establish that feepayers were negligence. Accordingly, we
12 recommend that the negligence penalty be deleted.

13 **OTHER DEVELOPMENTS**

14 None.

15
16
17 Summary prepared by John K. Chan, Business Taxes Specialist I
18
19
20
21
22
23
24
25
26
27
28