



Special Notice

STATE BOARD
OF EQUALIZATION

450 N STREET
SACRAMENTO, CA 95814

Important Information about Collecting Reimbursement for the Oil Spill Prevention and Administration Fee

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TAXPAYER INFORMATION
SECTION
800-400-7115
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711



Effective April 1, 2012, a separately stated charge for reimbursement of the Oil Spill Prevention and Administration Fee (oil spill fee) by a feepayer will be considered excess fee reimbursement *except* where the reimbursement is charged on a transaction or activity that results in the fee liability.

The Board of Equalization (BOE) administers the oil spill fee according to the Oil Spill Response, Prevention and Administration Fees Law (law). The law is silent about whether it is permissible for a feepayer to reimburse itself for its oil spill fee expense. However, the law ([Revenue and Taxation Code section 46501.5](#)) does discuss the consequences of charging and collecting reimbursement for the oil spill fee on transactions other than those on which the fee is imposed.

Excess fee reimbursement is defined as any amount that is charged by an owner or subsequent owner for crude oil, gasoline, diesel fuel, or other petroleum products on an activity or transaction that does not result in an oil spill fee liability and that is expressly represented as reimbursement of the oil spill fee. All amounts so collected will constitute excess fee reimbursement that must be paid to the BOE, unless refunded by the feepayer to its customer.

The law further provides that any excess oil spill fee reimbursement paid to the BOE by a feepayer will be credited on any oil spill fee amounts due and payable on the *same activity* and from the *same feepayer* that paid it to the BOE. The "same activity" must be either the receipt of crude oil or petroleum products at a marine terminal or transport of crude oil by pipeline from a production facility located in marine waters across, under, or through marine waters of the state. Any excess amounts collected on transactions or activities that are not subject to the oil spill fee may not be used to offset a feepayer's liability for the oil spill fee.

The law does *not* prohibit a feepayer from including the expense of the fee in the cost of the products it sells. Similarly, sellers commonly include such expenses as processing, transportation, and marketing expenses in the cost of these products.

Beginning April 1, 2012, only marine terminal operators and pipeline operators that are not the owners of the product being received or transported are permitted to collect oil spill fee reimbursement from the owners of the crude oil or petroleum products.

- *Marine terminal operators* are charged with collecting the oil spill fee from owners of crude oil and petroleum products based on each barrel received at the marine terminal with a vessel operating in, through, or across the marine waters of the state. However, if the marine terminal operator collects oil spill fees for more than the amount due from an owner of crude oil or petroleum products, the marine terminal operator would be required to refund to the owner the excess fee amount collected or pay the excess amount to the BOE. Any excess oil spill fee collected by a marine terminal operator on a transaction or activity that results in a fee liability during one reporting period may be used to offset any outstanding oil spill fee liabilities incurred during the same reporting period.

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- *Pipeline operators* that transport crude oil originating from a production facility in marine waters in the state with a pipeline operating across, under or through marine waters of the state are responsible for paying the oil spill fee. Pipeline operators that do not own the crude oil they transport are permitted to collect reimbursement for the fee from the owners of the crude oil being transported. Here, the third-party pipeline operator is collecting reimbursement for the fee on the same activity or transaction that results in the oil spill fee liability—the transportation of the crude oil in the pipeline. Again, if oil spill fees are collected for more than the fee amount due, the pipeline operator would be required to refund the excess fee amount collected to the owner or pay the amount to the BOE. Any excess oil spill fee collected by a pipeline operator on a transaction or activity that results in a fee liability during one reporting period may be used to offset any outstanding oil spill fee liabilities incurred during the same reporting period.

This interpretation of the excess fee reimbursement statute will take effect for transactions occurring in reporting periods beginning April 1, 2012. We will continue to credit excess oil spill fee reimbursement against amounts due and payable for the oil spill fee by a feepayer. As it has historically done, the BOE will allow such credits only for reporting periods through March 31, 2012.

Taxpayer Information Section

If you have any questions about this notice, please visit our website at www.boe.ca.gov or call our Taxpayer Information Section at 800-400-7115 (TTY:711). Customer service representatives are available weekdays from 8:00 a.m. to 5:00 p.m., Pacific time, except state holidays.