

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matter of the Petition for)
 Redetermination under the Underground)
 Storage Tank Maintenance Fee Law of:)
 CHRIS E. CHRISTENSEN and) Account Number: TK MT 44-043918
 MARGARET ANN CHRISTENSEN) Case ID 334774
 Petitioners) Sacramento, Sacramento County

Type of Business: Owners of underground storage tanks
 Audit period: 07/01/97- 08/10/04

<u>Item</u>	<u>Disputed Amount</u>		
Underground storage tank maintenance fee	\$ 131,450		
Penalty for failure to timely pay	\$ 13,145		
		<u>Fee</u>	<u>Penalty</u>
As determined and protested:		\$131,449.58	\$13,144.99
Proposed fee redetermination		\$131,449.58	
Interest through 6/25/10		120,550.72	
10% penalty for failure to timely pay		13,144.99	
Total tax, interest, and penalty		<u>\$265,145.29</u>	

UNRESOLVED ISSUES

Issue 1: Whether petitioners are liable for the Underground Storage Tank Maintenance (USTM) fees. We conclude that they are.

Petitioners operated a Chevron-branded gas station, from July 1, 1979, through August 10, 2004, and owned underground storage tanks (UST's) used at that station beginning in 1994. Petitioners held a seller's permit for the entire time that they operated the gas station, but they did not register as owners of the UST's and did not pay the USTM fees. The Fuel Industry Section of the Property and Special Taxes Department (Department) became aware that petitioners had owned the UST's in October 2004, when the subsequent owner of the real property where the tanks were located contacted the Board to establish a USTM fee account. The Department then conducted an investigation and found three documents on file with the Sacramento County Environmental

1 Management Department (EMD), signed by Mr. Christensen in 1994, 2001, and 2004, which related to
2 petitioners' ownership of the UST's. On each of those documents, in the section labeled "Board of
3 Equalization UST Storage Fee Account Number," petitioners had entered the account number TK MT
4 44-019523, which was registered to Chevron USA for the property from October 3, 1989, through
5 March 15, 1991. Between February and October 2005, the Department sent at least three letters to
6 petitioners seeking petitioners' registration as owners of the UST's and payment of the USTM fees.
7 Since petitioners failed to register as former owners of the UST's, the Department established the
8 amount of USTM fees due using the number of gallons reported on Schedule G of petitioners' sales
9 and use tax returns and the numbers of gallons reported on Schedule A by petitioners' suppliers.

10 Petitioners concede that they were the owners of the UST's and the real property on which the
11 tanks were located. Petitioners also acknowledge that they operated the gas station located at the
12 property from 1979 until August 10, 2004, and they purchased the property, which at the time included
13 the UST's, in February 1994. In addition, petitioners concede the accuracy of the number of gallons
14 the Department used to compute the USTM fees. Nevertheless, petitioners contend that they should
15 not be held liable for the USTM fees. One basis is that Sacramento County's EMD issued a permit for
16 petitioners' operation of the UST's, which petitioners contend it could not have done if the agency had
17 determined that operation of the tank was not in compliance with the Board's USTM fee program.
18 Using that reasoning, petitioners assert their operation of the tanks must have been in compliance with
19 the Board's USTM fee program. Petitioners also contend that they were never aware that they were
20 required to pay USTM fees. Petitioners allege that the franchisor (Chevron USA) and the Board were
21 aware of petitioners' ownership and operation of the UST's, but neither entity informed petitioners of
22 the requirement to pay USTM fees. Petitioners assert that the Board must have directed quarterly fee
23 returns to Chevron, but Chevron never forwarded those returns to petitioners. Further, petitioners
24 allege that the Board should have required Chevron or petitioners to post security for payment of the
25 USTM fees, and assert that, if the Board had done so, petitioners would have learned much earlier of
26 the obligation to pay the fees. In short, petitioners claim they never saw any communication from the
27 Board regarding USTM fee requirements. Moreover, petitioners contend that they should not be held
28

1 responsible for the fees because the Board purportedly waited too long after petitioners acquired the
2 property to notify them of their fee-payment obligations.

3 Petitioners were the owners of the UST's during the periods at issue and are thus liable for the
4 USTM fees. We reject petitioners' contention that their compliance with local agencies' permitting
5 requirements is evidence of compliance with the Board's USTM fee program and that they therefore
6 are not liable for the USTM fees. Petitioners do not contend that they did, in fact, comply with the
7 USTM fee program, and they clearly did not do so. Petitioners' compliance with permitting
8 requirements of other agencies does not absolve them of the requirement to report and pay the
9 applicable fees. Regarding petitioners' claim that the Board should have notified petitioners of their
10 obligation to pay the USTM fees, we find that the Board did make numerous attempts to do so, through
11 articles in several *Tax Information Bulletins* that petitioners would have received as holders of a
12 seller's permit for a gas station. Petitioners admitted at the conference that they received tax returns in
13 the mail, which would have included the *Tax Information Bulletins*, but indicated that, because of the
14 press of business, they passed along correspondence from the Board to their bookkeeper without
15 having read it. Moreover, even if we found that petitioners did not receive notice regarding the law,
16 California Code of Regulations, title 18, section 1212, subdivision (d), expressly states that ignorance
17 of fee obligations is no basis for relief.

18 Petitioners' arguments that the Department should have notified them earlier, and should have
19 demanded security, are premised on petitioners' belief that the Department was aware, since at least
20 1997, of petitioners' ownership of the UST's. Based on the available evidence, we conclude that the
21 Department was unaware that petitioners owned any UST's until the Department investigated a USTM
22 fee application filed by the person who purchased the property and UST's from petitioners. Regarding
23 petitioners' request for relief on the basis of the Department's alleged delay in notifying them of their
24 liability for USTM fees, we find no unreasonable delay whatsoever, nor any authority for the claimed
25 relief. The notice of determination was issued within the time permitted by the statute of limitations
26 and is entirely valid and timely.

27 **Issue 2:** Whether relief of the penalty for failure to timely pay is warranted. We find no basis
28 for relief.

1 Since petitioners failed to file returns or pay the USTM fees at issue, the Department assessed a
2 10-percent penalty for failure to timely pay the fees. Petitioners submitted a statement, signed under
3 penalty of perjury, requesting relief of the penalty on the grounds that, although they knew they were
4 required to register as UST owners with the Board, they did not know, and were not informed of, their
5 obligations to file USTM returns and pay USTM fees. Petitioners also state that they did not pay
6 USTM fees because the Department sent returns to Chevron that were intended for petitioners.

7 Petitioners concede that they knew they were required to register with the Board as UST
8 owners, but they claim that they never knew that they were required to file returns and pay fees. This
9 does not explain why petitioners failed to apply for a USTM fee account with the Board. In fact, rather
10 than fulfilling the obligation that they now profess to have always known – to register a USTM fee
11 account with the Board – petitioners responded to local agencies’ inquiries about their USTM fee
12 account number with the Board by providing another entity’s USTM fee account number. The fact
13 that petitioners provided an account number on those applications is evidence that they knew they were
14 required to have a USTM account. Further, petitioners received at least 11 *Tax Information Bulletins*
15 with their sales and use tax returns that addressed UST’s and the associated account and fee
16 requirements. That petitioners chose to disregard that correspondence without reading it themselves is
17 not a basis for relief. We note also that petitioners’ claim that the Department sent returns to Chevron
18 that were intended for petitioners is not supported by the evidence. After Chevron closed its USTM
19 fee account in 1991, the Department had no reason to send Chevron any information regarding the
20 subject UST’s. When the Department became aware of petitioners’ ownership of the UST’s in 2004, it
21 promptly and repeatedly communicated with petitioners in an ultimately unsuccessful effort to bring
22 petitioners into compliance with the law. For all these reasons, we find that petitioners’ failure to
23 timely pay the USTM fees was not due to reasonable cause and circumstances beyond petitioners’
24 control. We find there is no basis to recommend relief of the penalty for failure to timely pay the fees.

25 OTHER DEVELOPMENTS

26 None.

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