

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION FINAL ACTION SUMMARY

3 In the Matter of the Petition for Redetermination)
4 Under the Oil Spill Response, Prevention, and)
5 Administration Fees Law of:)

6 ARCO TERMINAL SERVICES CORPORATION)

Account Number: OA MT 46-000010
Case ID 3101377 Petitioner)

Houston, Texas

8 Type of Business: Owner of marine terminals

9 Audit Period: 07/01/98 – 12/31/01

10 Item Disputed Amount

11 Oil spill prevention and administration fees \$155,843

12 Fee

13 As determined \$287,883.00

14 Adjustment: Fuel Taxes Division +267,343.92

15 Proposed fee redetermination \$555,226.92

16 Amount concurred in -399,384.16

17 Protested \$155,842.76

18 Proposed fee redetermination \$555,226.92

19 Interest through 1/25/09 313,802.97

20 Total fee and interest \$869,029.89

21 Payments -869,029.8922 Balance \$0.00

23 Since petitioner notified the Board Proceedings Division that it waived its appearance for the
24 oral hearing, this matter was scheduled for decision on the Board's June 9, 2009 consent calendar.
25 However, Honorable Bill Leonard pulled this matter off the consent calendar, and the matter is thus
26 scheduled for decision as an adjudicatory matter.

27 **UNRESOLVED ISSUES**

28 **Issue 1:** Whether petitioner owes additional fees on the receipt of 3,896,068.88 barrels of
MTBE at its terminal because that MTBE is defined as a "petroleum product" for purposes of this fee.
We conclude that MTBE is defined as a petroleum product for purposes of the fee and that the fees
were properly imposed.

1 The Fuel Taxes Division of the Property and Special Taxes Department (Department) issued a
2 Notice of Determination (NOD) for \$287,883.00 in oil spill prevention and administration fees (oil
3 spill fees) and petitioner filed a timely petition for redetermination. Subsequently, the Department
4 prepared a reaudit report increasing the oil spill fees to \$555,226.92, and notified petitioner of its claim
5 for increase in the determination pursuant to Revenue and Taxation Code section 46354.

6 Petitioner contends that the assessed oil spill fees were excessive because it included oil spill
7 fees on Methyl Tertiary Butyl Ether (MTBE) received at petitioner's Long Beach, California marine
8 terminal, from sources outside California, which petitioner contends is not subject to oil spill fees
9 because it was produced from non-crude oil derived feedstocks.

10 Government Code section 8670.40, subdivision (b)(1) imposes the oil spill fees upon every
11 person owning crude oil at the time it is received at a marine terminal from within or outside
12 California, and upon every person owning petroleum products when they are received at a marine
13 terminal from outside California. The oil spill fee is collected by the marine terminal operator (in this
14 case, petitioner) from the owner of the crude oil or petroleum products, based on each barrel of crude
15 oil or petroleum products so received by means of a vessel operating in, through, or across the marine
16 waters of California. California Code of Regulations, title 18, section 2240, effective July 6, 2001,
17 defines petroleum products to include MTBE produced from crude oil derived feedstocks, and
18 presumes that MTBE is a petroleum product in the absence of documentation that it was produced
19 from non-crude oil derived feedstock. Prior to the adoption of Regulation 2240, the Department states
20 that it considered MTBE to be a petroleum product unless it was received from a petrochemical plant
21 or from a petrochemical source.

22 Here, the MTBE in issue originated from storage tanks in Houston, Texas. The tanks contained
23 non-crude oil based MTBE obtained from a petrochemical source, and crude oil based MTBE. This
24 MTBE is subsequently withdrawn from these tanks, placed in cargo holds of ships along with
25 additional crude oil based MTBE, and all or portions of the commingled mixture of MTBE was later
26 received from the ships at petitioner's terminal. Thus, the MTBE ultimately received at petitioner's
27 terminal was a mixture of several different types of MTBE, from different sources, some which were
28 originally "petroleum products," some not.

1 The Department concluded that oil spill fees apply to the disputed barrels because, although the
2 MTBE received from the storage tanks in Houston was not crude-oil-based and ordinarily would not
3 be subject to fees, nevertheless that MTBE was commingled in storage tanks in Houston with crude-
4 oil-based MTBE, thereby losing its identity as non-crude-oil-based MTBE (i.e., the commingled
5 mixture contained petroleum and met the definition of “petroleum products” for purposes of the fee).
6 In short, according to the Department, the non-crude-oil-based MTBE became “petroleum products”
7 for purposes of the oil spill fee when it was placed in storage tanks where crude-oil-based MTBE was
8 also placed, which was prior to its arrival at petitioner’s terminal.

9 Petitioner does not dispute that the non-crude-oil-based MTBE was commingled with crude-
10 oil-based MTBE. Petitioner also concedes that receipt of the crude-oil-based portion of the
11 commingled MTBE received at petitioner’s terminal is subject to oil spill fees. Nevertheless,
12 petitioner asserts that when commingled MTBE is placed into its terminal, the oil spill fee should only
13 apply to that portion of the MTBE that was originally crude-oil-based when placed in the storage tanks
14 in Houston or the ships that transported the MTBE. Petitioner asserts that it has the records necessary
15 to identify and track the portion of MTBE which it contends came from petrochemical sources (i.e., is
16 non-crude-oil-based).¹ Petitioner contends that nothing in the applicable law or regulations requires
17 non-crude-oil-based MTBE to be kept distinct and physically separated from crude-oil-based MTBE in
18 order for its receipt to not be subject to the oil spill fee.

19 We concur with the Department’s conclusion. The MTBE ultimately received at petitioner’s
20 terminal was a mixture of several different types of MTBE, from different sources, some which were
21 originally “petroleum products,” some not. Nonetheless, since that commingled MTBE constituted
22 MTBE containing petroleum, it came within the definition of “petroleum products” for purposes of the
23 oil spill fee and its receipt at petitioner’s terminal is therefore subject to the oil spill fees. Accordingly,
24 we conclude that no adjustments to the Department’s reaudit are warranted.

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26 ¹ At the conference, petitioner submitted a spreadsheet in which it calculates that of the 8,854,702 barrels of MTBE
27 received by ship at its terminal from Houston during the months from July 1998 through June 2001, 44 percent (or
28 3,896,068.88 barrels, the measure of the disputed fees) should not be subject to fees because it can be traced to MTBE
received from petrochemical companies or sources at the storage tanks in Houston.

1 **Issue 2:** Whether the Department timely asserted an increase in the determination. We
2 conclude that the Department's assertion of an increase was not timely as to increases asserted for
3 months prior to January 1999. However, we also conclude that those time-barred increases should be
4 offset against overpayments in other periods, which has already been done in the reaudit.
5 Consequently, we recommend no adjustments to the net additional oil spill fees recommended in the
6 reaudit.

7 Section 46354 requires that an assertion of an increase in a deficiency determination be made
8 within eight years after the date that the amount of oil spill fees for the period for which the increase is
9 asserted was due. The oil spill fees that petitioner owed along with its monthly returns were due on or
10 before the 25th day of the month following each of those monthly periods. Since the Department
11 asserted an increase in fees by letter dated February 23, 2007, under section 46354, that increase is
12 timely only as to monthly periods starting with January 1999. That is, the increases in measure and
13 fees that the Department asserted for the months July through December 1998 were barred by the time
14 limits in section 46354, when the Department asserted those increases.

15 However, section 46201, subdivision (a), provides that in making a deficiency determination
16 the Board may offset overpayments for a period or periods against underpayments for another period
17 or periods and against the interest and penalties on the underpayments. Here, during the audit,
18 petitioner filed a timely claim for refund for the entire audit period, for overpayments caused by
19 overreporting of taxable receipts on its fee returns for the audit period.

20 When a taxpayer files a claim for refund, its entire liability for the period in question,
21 overpayments and underpayments, must be considered together to determine if, *in the aggregate*, the
22 taxpayer has underpaid or overpaid its liability for the period(s) in issue. Considering petitioner's
23 entire liability for the period covered by its claim for refund, *after* offsetting all overpayments against
24 underpayments, we conclude that there remains a net underpayment in the amount determined in the
25 Department's reaudit. Thus, we conclude that the time-barred increases, which are included in the net
26 liability recommended in the reaudit, should be offset against the overpayments found in other periods.
27 Since all of those time-barred increases and all of those overpayments are already included in the net
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1 total measure and oil spill fees recommended in the reaudit, we recommend no changes to the net
2 additional liability for oil spill fees recommended in the reaudit.

3 **OTHER DEVELOPMENTS**

4 None.

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7 Summary prepared by Rey Obligacion, Business Taxes Specialist III
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