

Memorandum

To : Mr. Ed King, Chief
Fuel Taxes Division MIC:33

Date: June 3, 1996

From : Janet Vining
Legal Division

Subject: **Applicability of Underground Storage Tank Fee to Schools**

This is written in response to your March 25, 1996 memorandum to Mary Armstrong, requesting an opinion concerning the applicability of the Underground Storage Tank Fee to schools. For the reasons set forth below, we conclude that the Underground Storage Tank Fee applies to local school systems, including community colleges and community college districts, but not to the University of California or California State University systems.

The Underground Storage Tank Fee is imposed on every owner of an underground storage tank, based on the number of gallons of petroleum placed in the tank during the reporting period (Health and Safety Code Section 25299.41). Health and Safety Code Section 25299.21 defines "owner" to mean the owner of an underground storage tank containing petroleum, but the definition specifically excludes the state or any agency or department thereof, or the federal government. Therefore, schools and school districts are liable for the Underground Storage Tank Fee unless they are agencies or departments of the state or federal government.

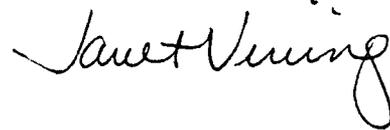
There is ample case law holding that the University of California (the state university system) is a state agency (Ishimatsu v. Regents of the University of California (1968) 266 Cal.App.2d 854; Goldberg v. Regents of the University of California (1967) 248 Cal.App.2d 867; 3 Ops.Cal.Atty.Gen. 184 (1944)). There is, however, no similar precedent concerning the California State University (the state college system) or the community colleges.

California State University (the state college system) is specifically created by the California Education Code (Section 66600), and is therefore a state agency or department. The community college districts, while deriving much of their authority from the Legislature (see Education Code Section 66700, et seq, and 70900, et seq) are not created by state law, but by local action (see, for example, Education Code Section

74151, which provides that an action to form a new community college district may be initiated by filing a petition with the county superintendent of schools), and are therefore not state agencies or departments.

In summary, we conclude that the University of California and California State University systems are agencies or departments of the state, and are exempt from the Underground Storage Tank Fee. We further conclude that the community college districts and public elementary and secondary school districts are local in nature and are therefore not exempt from the fee. Private schools are also subject to the fee, as the exemption only applies to public entities.

Please call me if you have any additional questions or would like to discuss this memorandum.



JV:lm

cc: Mr. Bob Frank
Mr. Arlo Gilbert
Mr. Bob O'Neill
Ms. Mary Armstrong
Ms. Stella Levy