

Memorandum

Mr. David McKillip
Environmental Fees Unit

Date : February 15, 1991

From : Janet Vining
Tax Counsel

Subject: Underground Storage Tank Fee --
Fuel Placed in More Than One Underground Tank

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EXCISE TAX DIVISION

This is in response to your December 27, 1990 memorandum, concerning the underground storage tank fee.

Health and Safety Code Section 25299.41 requires every owner of an underground storage tank to pay a fee of six mills for each gallon of petroleum placed in an underground storage tank.

You have asked for an opinion concerning application of the fee when, for example, fuel is transferred between tanks and there is a change in ownership (such as an intercompany transfer) or fuel is transferred between tanks and there is no change in ownership. The current position of the Environmental Fees Unit is that the fee is due each time the petroleum is placed in an underground storage tank.

I concur with that position. Health and Safety Code Section 25299.41 states that every owner of an underground storage tank shall pay a storage fee of six mills for each gallon of petroleum "placed in an underground storage tank" which he or she owns. The plain language of the statute indicates that the fee applies every time petroleum is placed in an underground storage tank, and there is no exception for the transfer of petroleum between tanks, whether owned by the same person or not. Therefore, if 100 gallons of petroleum were routed through ten different tanks owned by the same person, the fee would be calculated based on 1,000 gallons of petroleum being placed in underground storage tanks.

This interpretation is consistent with the purpose of the Petroleum Underground Storage Tank Cleanup Act (Health & Saf. Code § 25299.10 et seq.). In adopting the Act, the Legislature declared that a significant number of the underground storage tanks containing petroleum in the state may be leaking, and it was necessary to establish a fund to pay for corrective action

where insurance coverage was not available. Monies for that fund are raised through the imposition of the underground storage tank fee. Every time petroleum is stored in a tank, the possibility of leakage and contamination is present. The more tanks the same petroleum is placed in, the greater the risk, since any of the tanks may be leaking. Therefore, it is consistent with the Legislature's intent in adopting the Act to impose the fee every time petroleum is placed in an underground storage tank, even if the same petroleum has been transferred there from another tank.

Janet Vining

JV:wk
2811C

cc: Mr. E. V. Anderson
Mr. Robert M. Frank
Mr. Jeff George
Ms. Carol Reisinger
Mr. Gary J. Jugum
Mr. Donald J. Hennessy
Mr. Gordon Adelman

Memorandum

: Janet Vining

Date : December 27, 1990

From : David W. McKillip

Subject: Underground Storage Tank Fee - Fuel placed in more than one
underground tank

As you are aware Senate Bill 2004 added Section 25299.41 to the Health and Safety Code. This section requires owners to pay a storage fee of six mills for each gallon of petroleum placed in an underground storage tank.

We are currently taking the position that the fee is due each time the petroleum is placed in an underground tank. I would appreciate your interpretation of this section. Please consider situations involving transfers of fuel between tanks where there is a change in ownership of the fuel and where there is no change in ownership (intercompany transfers).

We have recently sent out a notice to tank owners regarding this new fee. Since we are receiving a large number of calls relating to this issue I would appreciate a response as soon as possible.

DWM:djt



cc: Mr. E. V. Anderson
Mr. Robert M. Frank
Mr. Dennis Maciel
Mr. Jeff George