

# Memorandum

To: Robert Frank, Supervisor  
Fuel Taxes Section - MIC:30

Date: October 12, 1995

From: Stella Levy  
Staff Counsel



Subject: Vaulted Tanks

This is in response to your request for a legal opinion as to whether vaulted tanks are subject to the Underground Storage Tank Fee. For the reasons discussed, we conclude that tanks fitting the factual description below are excluded from the Fee.

## STATEMENT OF FACTS

Underground vaults are manufactured and installed for the purpose of containing petroleum storage tanks. The vaults are generally made of concrete and installed underground in the manner of a cellar. The vault is sealed; however, an operator can enter the vault to inspect the tanks. The tanks are raised off the floor of the vault permitting visual inspection of the entire tank for leaks or corrosion. If any leaks occur, they are contained within the vault. There is no remote dispensing or filling of the tanks. The connecting pipes drop vertically into the tanks and can be visually inspected.

## APPLICABLE LAW

Federal law provides the applicable definitions at 40 CFR section 280.12.

“Tank” is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

“Underground area” means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

“Underground storage tank” or “UST” means any one or combination of tanks (including underground pipes connected thereto) that is used to

contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. This term does not include any...[s] storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

Health and Safety Code section 25280 contains a statement of the legislative intent in enacting the UST Fee Law :

[I]t is in the public interest to establish a continuing program for the purpose of preventing contamination from, and improper storage of, hazardous substances stored underground...[and to] ensure that newly constructed underground storage tanks meet appropriate standards...so that the health, property, and resources of the people of the state will be protected.

Health and Safety Code section 25283.5 provides that a UST is exempt from the payment of the Fee if the following criteria are met:

- (a) All exterior surfaces of the tank, including connected piping, and the floor directly beneath the tank, can be monitored by direct viewing.
- (b) The structure in which the tank is located is constructed in such a manner that the structure provides for secondary containment of the contents of the tank, as determined by the local agency
- (c) The owner or operator of the underground storage tank conducts daily inspections of the tank and maintains a log of inspection results for review by the local agency,
- (d) The local agency determines that the UST meets requirements which are equal to or more stringent than those imposed by the law.

## ANALYSIS

The purpose of the Fee is to provide a fund for cleanup of soil contaminated by leaking underground tanks and to regulate newly constructed tanks. Certain below ground tanks are excluded from the definition of UST and/or exempted from the registration and fee payment requirements. It is our opinion that vaulted tanks could fall within this exclusion/exemption provided that the concrete vault is determined by the local agency to provide for secondary containment of the petroleum. The description of the vault indicates that the tanks are subject to

Robert Frank  
October 12, 1995  
Page 3

direct visual inspection of all exterior surfaces. The other requirements of Health and Safety Code section 25283.5 must also be met.

### **CONCLUSION**

Not all tanks contained in vaulted systems are excluded or exempted from the Fee. However, a system which provides adequate secondary containment, permits visual inspection of the entire exterior surface of the tanks including the underside and all connected piping, and which is inspected on a daily basis would meet the requirements for the exemption if approved by the local agency.

SCL:wk

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