



STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0033
916 324-2379 • FAX 916 324-2554
www.boe.ca.gov

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Executive Director

February 5, 2009

Mr. Jay McKeeman, Vice President
Government Relations and Communications
California Independent Oil Marketers Association
3831 N. Freeway Blvd. #130
Sacramento, CA 95834

Subject: Suspension of Underground Storage Fund (Fund) claims and payment delays;
role of the Board in collection and distribution of Fund revenues

Dear Mr. McKeeman:

I am in receipt of my copy of your letter dated February 3, 2009, addressed to Honorable Bill Leonard. The Fuel Taxes Division (FTD) of the State Board of Equalization (BOE) understands the critical nature of the suspension of the claims from the Underground Storage Tank Cleanup Fund. The FTD would like to assist you in your assessment of how the problems you have cited came to pass and what solutions both short-term and long-term are available to address the problems.

The following are responses to the list of questions posed in your February 3, 2009 letter.

1. What is the role of BOE in the collection of the UST fund?

The BOE is jointly responsible for administration of the Underground Storage Tank Maintenance (UST) Fee Law with the California State Water Resources Control Board (SWRCB). The BOE is responsible for all activities relating to feepayer registration, fee reporting functions, direct feepayer support, delinquency enforcement, accounts receivable collections, cashing, managed audit program, and compliance verification. All collection activity for the UST program is performed by the FTD staff.

2. What enforcement authority is available to collect from non-paying entities?

The BOE's primary focus in addressing outstanding accounts receivable balances is to work with the feepayer to compel voluntary compliance. A long term cooperative relationship between the BOE and the feepayer is the most effective method of securing a long-term revenue stream from a particular underground storage tank (UST) owner or site. FTD offers an installment payment program tailored to maximize revenue, while protecting the long term revenue stream. A recent addition to this program is the "Auto-pay" system which automatically deducts accounts receivable installment payments from a feepayer's bank account.

If we are not able to obtain voluntary compliance, FTD has a number of enforced collection tools at our disposal. These include; liens filed against real property, direct levies against bank

accounts, accounts receivables or wages, warrants for sheriff deputies to intercept business proceeds or seize assets, and offsets against refunds or judgments. We also maintain cooperative information sharing agreements with other regulatory agencies to aid in the location of feepayers or assets.

3. What enforcement actions are being taken against delinquent entities?

BOE combats non-compliance on several fronts. The FTD is currently conducting extensive outreach and investigation programs to locate and achieve compliance from previously unregistered UST owners. Outreach and investigation efforts include:

- **BOE-5 Investigation Program-** FTD staff directly contacts and investigates sales tax accounts with business and account characteristic codes indicating the presence of USTs, usually triggered by changes to registration records. Every new or updated sales and use tax registration of a gas station is investigated by FTD staff for compliance with the UST program.
- **SCOP-** Statewide Compliance and Outreach Program – In conjunction with Sales and Use Tax Department staff, businesses in targeted areas are investigated for compliance with BOE programs by BOE field investigators. Businesses in the targeted areas with USTs are investigated for compliance with the provisions of the UST Fee Law. Non-compliant UST sites are referred to FTD for investigation and registration.
- **Field Audit Leads-** Each BOE audit completed at a location where USTs are present generates a report to FTD staff. Each report is investigated to assure compliance with the UST fee program (AUD-506 Report).
- **CUPA Leads-** FTD staff works cooperatively with local UST permitting agencies to assure uniform compliance including attending CUPA events.
- **Board of Equalization Tax Evasion Hotline-** BOE has a process in place to accept and investigate tips on unregistered accounts, including UST accounts, from the general public.
- **State Water Resources Control Board Leads-** All accounts seeking UST fee program reimbursement from the SWRCB are investigated to assure compliance with the UST Fee program.
- **Fuel Taxes Division direct mail Newsletter-** All accounts registered for FTD programs receive annual informational newsletters. The UST fee program is featured periodically in this publication.
- **Small Business Fairs-** FTD staff is present at small business fairs throughout California, presenting material for and explaining requirements of FTD programs, including the UST fee program.
- **Tax Information Bulletins-** All account registered with the BOE's Sales and Use Tax program receives a quarterly Tax Information Bulletin. The UST fee program has been featured several times in this publication.

If a previously unregistered entity is discovered, FTD is again primarily focused on working cooperatively with the UST owner to compel voluntary compliance. If BOE is unable to obtain a registration application from the owner of a particular delinquent UST, we will complete an ownership investigation in cooperation with local permitting agencies to accurately identify the UST owner. Once an ownership determination is made, an involuntary registration is processed and the account enters our delinquent payment cycle.

4. What is the Board's assessment of delinquent payments (i.e. % of revenues that are delinquent)?

On December 31, 2008 the UST fee program had 695 accounts with an active delinquency, based on information retrieved from the BOE's Automated Compliance Management System. This would represent a 9.3% delinquency rate across all our UST accounts. This percentage is in line with other similar sized fee programs administered by BOE.

The UST program also maintains statistics for aged delinquencies (353 accounts). We consider an account aged when there is a delinquency over 6 months old for a particular account. The current aged delinquency rate for the UST program is 4.7%

The primary focus of the FTD delinquency enforcement effort is to work with UST owners to facilitate voluntary compliance. Our aim is to have the UST owner filing returns and "self-reporting" outstanding UST fee revenue. If we are unable to compel voluntary compliance, BOE will issue a billing for outstanding UST fees based on records of fuel deliveries reported to our Sales and Use Tax program for the prepayment of the sales tax on fuel.

5. What remuneration does the Board receive for revenue collection? How is that funding budgeted and spent?

The BOE does not collect a remuneration or percentage of revenue for administration; all administration expenses for this program are directly attributable to UST fee administration expenditures. Staffing levels were set at the inception of the program and can only be augmented, or decreased, through the State's Budget Change Proposal process; which includes review and approval by; the Board's Administration, the Board Members, the California State Department of Finance, and the Legislative Branch of the State Government. There are currently 24 BOE staff members assigned to the UST fee program. These staff members provide a broad range of fee administration services for the 7,446 registered UST fee accounts in this program.

In Fiscal Year 2007-2008, BOE's FTD collected \$243,649,000 under the provisions contained in the UST Fee Law. Our cost of administration for the UST Fee for Fiscal Year 2007-08 was \$2,976,000. This represents a revenue to administration cost ratio of 82 to 1. This ratio will vary year-to-year because, while revenue is tied directly to consumption of fuel in California and the current UST Fee rate, our administration cost is constant.

6. How are revenues shifted from BOE jurisdiction to the Fund? How often are payments to the Fund made?

BOE electronically transfers incoming UST Fee payments directly to the UST Fund. Transfers are made numerous times every month, often more than once a day. Deposits are made to the UST Fund to coincide with "batch" processing in our cashiers unit. Because the fee returns for this program are collected quarterly, the fund will typically receive a spike in revenue on or about the due date of the return, and then only see minimal activity until the next quarterly due date approaches.

7. What is your analysis of revenue collection over the last four quarters, and what is your estimate for income over the next four quarters?

In the Fiscal Year periods 2006-07 and 2007-08, BOE records reflect taxable distributions of 36,935,270,897 gallons of motor vehicle (gasoline) and diesel fuel in the State of California. For the same period, the BOE collected UST Fees on 34,326,360,521 gallons of petroleum product (mostly gasoline and diesel fuel).

For Fiscal Year 2006-2007 and 2007-2008, the BOE collected the UST Fee on 92.94% of the motor vehicle and diesel fuel distributed in California. The remaining 7.06% is largely attributable to exempt distributions (fuel not placed in USTs). This percentage comparison to the motor vehicle and diesel fuel taxable consumption has been a consistent trend for the last eight fiscal years.

In Fiscal Year 2007-2008, FTD collected \$243,649,000 under the provisions contained in the UST Fee Law. Because petroleum consumption in the state of California is continuing to decline (See attached Appendix A), the associated fee revenue for the next fiscal year period could experience a similar decline; estimated to be roughly 5%.

If you have any questions, please contact me at (916) 324-2379.

Sincerely,

Edward W. King, Chief
Fuel Taxes Division

EWK:lf

Attachment

cc: Honorable Betty T. Yee, Chairwoman
Honorable Judy Chu, Ph.D., Vice Chair
Honorable Bill Leonard
Honorable Michelle Steel
Honorable John Chiang

Mr. Alan LoFaso
Mr. Steve Shea
Ms. Barbara Alby
Mr. Michael Richman
Ms. Marcy Jo Mandel

Mr. Ramon J. Hirsig
Mr. David J. Gau
Mr. Lou Feletto