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Leases of Underground Storage Tank

The owner of an underground storage tank who leases the tank to another person is not relieved of liability under the Underground Storage Tank Maintenance Fee Law by virtue of an agreement between the owner and the lessee stating that the lessee is responsible for the payment of the tax. The owner is free to seek reimbursement from the lessee for the fees paid. 8/26/93.

Memorandum

CONFIDENTIAL

ATTORNEY-CLIENT PRIVILEGE

To: Mr. Robert Frank
Environmental Fees Division (MIC: 57)

Date: August 26, 1993

From: Stella Levy
Tax Counsel

Subject: (Redacted)

I am responding to your July 29, 1993 memo to Larry Augusta requesting legal advice regarding the effect of a settlement agreement on liability for payment of the Underground Storage Tank Fee. Specifically, you have asked whether the owner of an underground storage tank is relieved of liability for payment of the fee if he has a formal agreement with the lessee of the tank that the latter will pay the fee.

In the above-referenced case, Mr. (Redacted) was assessed almost \$13,000 as the owner of underground storage tanks located in (redacted). Mr. (redacted) leases the tanks along with a gas station/mini-mart to Mr. (redacted). Mr. (redacted) filed a petition for redetermination alleging, inter alia, that under a settlement agreement with Mr. (redacted)^{1/}, the latter is responsible for payment of the underground storage fee retroactive to January 1, 1990.

We concur with the opinion expressed in your memo that under the statute the owner of the tank, Mr. (redacted) remains liable for the fees including any deficiencies determined as a result of audit or investigation. Mr. (redacted) is free to seek reimbursement from Mr. (redacted) under their settlement agreement.

Since Mr. (redacted) operates a gas station and mini-mart he is already permitized by us under the Sales

^{1/}The settlement agreement was in satisfaction of a breach of contract lawsuit filed by Mr. (redacted) against Mr. (redacted).

and Use Tax Law. We are thus permitted to see his books from which we can ascertain the amount of gasoline flowing into the underground tanks. We would recommend that seeking a limited waiver of confidentiality from Mr. (redacted) permitting us to inform Mr. (redacted) of the factual basis for our UST fee billing. A suggested form is attached to this memorandum.

SCL:es

Attach.

cc: Mr. Ed King (MIC: 33)
Mr. Larry Augusta
Ms. Janet Vining

LIMITED WAIVER OF CONFIDENTIALITY

**My name is _____ . I am the lessee of
underground storage tanks located at _____
_____ which are owned by _____
_____ . I hereby give the State Board of Equalization permission
to give to the owner of said tanks that information relating to my purchases of fuel
which will verify the Board's assessment of fees under the Underground Storage
Tank Maintenance Fee Law.**

Signed by Lessee

Date