

Memorandum

To: Mr. Harold Hale, MIC:62
Chief, Valuation Division

Date: October 4, 2001

From: Ken McManigal
Tax Counsel IV

Subject: *Assessment Jurisdiction of Breakout Tanks of a Pipe Line System*

This is in response to your September 18, 2001, memorandum to Larry Augusta wherein you inquired concerning Valuation Division's jurisdiction to assess "breakout tanks", tanks used to relieve surges in a hazardous liquid pipe line system or used to receive and store hazardous liquid transported by a pipe line for re-injection and continued transportation by pipe line. For the reasons hereinafter set forth, these tanks are parts of the pipe lines, as pipe lines were defined by the California Supreme Court in General Pipe Line Co. v. State Board of Equalization (1936) 5 Cal. 2d 253, in which they are located; and as parts of pipe lines, the Board's jurisdiction to assess pipe lines necessarily includes the jurisdiction to assess the tanks as parts of the pipe lines. You also inquired about your jurisdiction to assess intracounty gathering lines that are connected to breakout tanks via a receiving manifold. For the reasons hereinafter set forth, these gathering lines are also parts of the pipe lines, which the Board has jurisdiction to assess.

Inquiry

As stated in your memorandum, a pipe line system is typically a series of smaller segments of inter and/or intracounty pipe lines transporting crude from location to location and will temporarily store crude in breakout tanks, tanks used to "(a) relieve surges in a hazardous liquid pipelines system or (b) receive and store hazardous liquid transported by a pipeline for re-injection and continued transportation by pipeline." (49 CFR 195.2.) In many cases, pipe line segments do not physically attach to each other but will be attached to a common breakout tank (see illustration). Thus, you ask the following questions:

1. Does the Board have assessment jurisdiction over breakout tanks, and if so, what tests must be met to determine their jurisdiction?
2. If a breakout tank is locally assessed, what is the assessment jurisdiction of pipe lines that are not physically attached to each other (i.e., the pipe line system segments are physically separated by a locally assessed breakout tank)?
3. Does the Board assess intracounty gathering lines that are connected to breakout tanks via a receiving manifold?

Analysis

The answers to your questions are found in the seminal case of General Pipe Line Co. v. State Board of Equalization (1936) 5 Cal. 2d 253, wherein the California Supreme Court held that it was the Board's duty under the Constitution (former Article XIII, Section 14) to assess all inter-county pipe lines and the Court defined a pipe line to include not only the pipe, but the pumps, boilers, engines, and other appurtenances necessary to the pipe line's proper functioning as such:

"...We think it clear that the pipe line herein includes not only the pipe, but the appurtenances necessary to its proper functioning as such. Evidence as to what were these appurtenances was submitted to the court below, and the finding of that court is, in our opinion, a reasonable and proper determination of the items constituting plaintiff's pipe line. The court found that it included the following:

"The line of pipe, together with couplings, collars, valves and fittings, with protection covers; the structures supporting or encasing the pipe, above or below ground or under water; the pumps, boilers, engines, motors, manifolds, intakes, header station, control valves and auxiliary equipment attached to and connected therewith and necessary to the operation of the said major station units, receiving, shipping, flow, balance and surge tanks, together with the suction from leased storage tanks, to, by and through pumping stations, when such pumps, tanks and so forth are essential and part of and necessary to the use and operation of the pipe line." (pages 256-257)

Thus, over the years, in accordance with the Supreme Court's definition of pipe line as set forth above, we have been of the opinion and advised that pipe lines to be assessed by the Board for property tax purposes are to be assessed based upon that definition.^{1 2} As indicated, the definition includes "receiving, shipping, flow, balance and surge tanks" as parts of pipe lines when such tanks are essential and part of and necessary to the use and operation of the pipe line, and also "manifolds" attached to and connected with pipe lines and necessary to the operation of the major station units.

Turning to your questions then:

1. Does the Board have assessment jurisdiction over breakout tanks, and if so, what tests must be met to determine their jurisdiction?

Answer: Yes, the Board has assessment jurisdiction over breakout tanks, as such tanks are parts of pipe lines and are essential and necessary to the use and operation of the pipe lines.

¹ The "understanding that the term 'necessary and essential to the operation of the pipe line' only applies to a specific court case and does not apply to other assesseees" is a mistaken one and is incorrect. See, for example, my March 23 1994, memorandum to Gene Mayer regarding Assessment Jurisdiction for Intercounty Pipe Line Property, copy attached, on which Property Tax Annotation No. 755.0082 is based.

² An exception occurred in the 1980s when the Board assessed pipe line rights-of-ways as well and litigation ensued, culminating in the 1993 appellate court decision of Southern Pacific Pipe Line Co. v. State Board of Equalization (1993) 14 Cal. App. 4th 42, that the Board could not do so.

As defined above, breakout tanks are tanks used to relieve surges and tanks used to receive and store product for re-injection and continued transportation by pipe line. As indicated in the definition of pipe line in General Pipe Line Co. v. State Board of Equalization, *supra*, surge tanks are specifically named as tanks which are parts of pipe lines and subject to Board assessment. It seems clear that such tanks would also be essential and necessary to the use and operation of pipe lines within the meaning of the definition, the obvious reason being that if they were not, why would pipeline companies include them as parts of their pipe lines.

Similarly, tanks that are parts of pipe lines and that are used to receive and store product for re-injection and continued transportation by pipe line would seem to be receiving, shipping, flow, and/or balance tanks which are essential and necessary to the use and operations of pipe lines within the meaning of the definition. Again, why include them as parts of pipelines if they are not?

2. If a breakout tank is locally assessed, what is the assessment jurisdiction of pipe lines that are not physically attached to each other (i.e., the pipe line system segments are physically separated by a locally assessed breakout tank)?

Answer: As indicated above, breakout tanks are parts of pipe lines, and breakout tanks that are essential and necessary to the use and operation of pipe lines are to be assessed by the Board.

3. Does the Board assess intracounty gathering lines that are connected to breakout tanks via a receiving manifold?

Answer: Yes. As indicated above, manifolds are also parts of pipe lines as defined by the Supreme Court in General Pipe Line Co. v. State Board of Equalization, *supra*, and the Board has previously assessed gathering lines directly connected to pipe lines as parts of the pipelines,³ although I do not recall where in the pipe lines or how the connections were made. The principle is the same, however: a pipe line moving product from one or more locations to one or more other locations. The situation is the same as that of the Board assessment of canals and water companies in the 1970s, at which time it was concluded that the Board would begin assessing all canal company property which could reasonably be regarded as a part of an intercounty canal, which would result in the Board assessing property previously assessed by the counties, such as land, water rights, wells and pumps, and gathering and distribution lines.

Attachments

³ See, for example, Board assessment of California Gas Gathering, Inc.'s (478) pipe line, which included assessment of gathering lines.

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