

Letter of Findings Number: 06-0114
Underground Storage Tank Fee
For the Years 1991-2005

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ISSUE

I. Underground Storage Tank Fee-Imposition

Authority: IC §13-23-12-1, IC §13-12-12-4, IC § 6-8.1-1-1, IC § 6-8.1-5-1(b), IC § 13-23-12-7.

The taxpayer protests the imposition of the underground storage tank fees and penalties.

STATEMENT OF FACTS

The taxpayer owns a convenience store with four underground storage tanks. The Indiana Department of Environmental Management (IDEM) determined that the fees had not been paid for the years 1991-2005. The Indiana Department of Revenue (department) assessed the additional underground storage tank fees, interest, and penalty. The taxpayer protested the imposition of the fees, interest, and penalty. A hearing was held and this Letter of Findings results.

I. Underground Storage Tank Fee- Imposition

DISCUSSION

IC § 13-23-12-1 imposes a fee on underground storage tanks. Although IDEM administers the state regulation of underground storage tanks, IC §13-12-12-4 mandates that the department collect and deposit the underground storage tank fees. IC § 6-8.1-1-1 defines "listed tax" to include "any other tax or fee that the department is required to collect or administer." Since the department, pursuant to statute, must collect the underground storage tank fees, these fees constitute listed taxes. All of the laws and regulations concerning the department's collection of listed taxes apply to the department's collection of the underground storage tank fees.

All tax assessments are presumed to be accurate. IC § 6-8.1-5-1(b). The taxpayer bears the burden of proving that any assessment is incorrect. Id.

The fee on underground storage tanks is imposed at IC §13-23-12-1 as follows:

(a) Each year the owner of an underground storage tank that has not been closed before July 1 of any year under:

(1) rules adopted under IC §13-23-1-2; or

(2) a requirement imposed by the commissioner before the adoption of rules under [IC 13-23-1-2](#);

shall pay to the department of state revenue an annual registration fee.

Pursuant to the imposition statute, the underground storage tank fee is imposed on all underground storage tanks open and available for use on July 1 of the year. The party who owns the property during the tax period is the person liable for payment of the underground storage tank fees.

The taxpayer produced documentation substantiating that he purchased the convenience store property including the underground storage tanks on which the fees were assessed on May 2, 2005. The taxpayer was not the owner of the underground storage tanks on July 1 during the tax period 1991-2004. Therefore, the taxpayer is not responsible for the payment of the underground storage tank fees due for the years 1991-2004.

He was the owner of the tanks on July 1, 2005. Therefore, he is responsible for the underground storage fee for the tax period 2005.

Alternatively, the taxpayer argued that there were only two underground storage tanks rather than the four on which the fees were assessed. The taxpayer failed to provide any documentation substantiating this assertion. Therefore, the taxpayer failed to sustain his burden of proving that there were only two underground storage tanks.

Finally, the taxpayer argued that he is not liable for the penalties associated with the nonpayment of the underground storage tank fees. The penalty is assessed at IC § 13-23-12-7 as follows:

(a) Except as provided in subsection (e), an owner of an underground storage tank who:

(1) is required to pay the fee under section 1 of this chapter; and

(2) fails to pay the fee when due as established under section 2 of this chapter;

shall be assessed a penalty of not more than two thousand dollars (\$2,000) per underground storage tank for each year that passes after the fee becomes due and before the fee is paid.

The taxpayer contends that pursuant to this statute, the penalty is not imposed until a year passes after the date the underground storage tank fee is originally due. For example, the taxpayer argues that the underground storage tank fees for which he is liable were due on December 15, 2005. Therefore, no penalty would apply until one year has passed from the due date and the payment is an entire calendar year late. Since it is not yet December 15, 2006, no penalty would apply in this situation.

The taxpayer errs in this interpretation of the statute imposing the penalty. The penalty applies as soon as the underground storage tank fee is late, or in this taxpayer's case on December 16, 2005. The language on which the taxpayer relies refers to the imposition of a penalty for each calendar year that the underground storage tank fee remains unpaid. The first penalty applies on December 16, 2005. If the underground storage tank fee remains unpaid after another calendar year or on December 16, 2006, a second penalty of two thousand dollars (\$2000) for each underground storage tank will be imposed and so forth for each subsequent year.

The taxpayer failed to pay the underground storage tank fee by December 16, 2005. Therefore a penalty of two thousand dollars (\$2000) per tank properly applies for the tax year 2005.

FINDING

The taxpayer's protest to the assessment of the underground storage tank fees and penalties is sustained for the tax periods 1991-2004. The taxpayer is liable for the underground storage tank fee assessed on four underground storage tanks for the tax period 2005. The taxpayer is liable for the penalties associated with the unpaid underground storage tank fee for the tax period 2005.

The taxpayer is admonished that if the underground storage tank fees are not paid in full, the taxpayer will not be eligible for full payments from the Excess Liability Trust Fund in the event that there is a gasoline spill or other environmental problem resulting from the taxpayer's underground storage tanks.

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