

**Letter of Findings Number: 08-0502P
Underground Storage Tank Penalty
For the Tax Period 2006-2007**

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ISSUE

I. Underground Storage Tank Penalty – Imposition.

Authority: IC § 13-23-12-7; IC § 6-8.1-5-1; IC § 6-8.1-1-1.

The Taxpayer protests the imposition of the underground storage tank penalty.

STATEMENT OF FACTS

The Taxpayer is a corporation operating a convenience store and gas station. The business opened in March of 2005. The Taxpayer did not register to pay the underground storage tank fee. When this was discovered, the Taxpayer registered with Indiana Department of Environmental Management (IDEM) and paid the past due and current underground storage tank registration fees. IDEM subsequently assessed a penalty. The Taxpayer protested the imposition of the penalty. A hearing was held and this Letter of Findings results.

I. Underground Storage Tank Penalty – Imposition.

DISCUSSION

IDEM imposed a penalty for the non-payment of underground storage tank annual registration fees pursuant to the provisions of IC § 13-23-12-7(a) as follows:

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. (**Emphasis Added**).

Underground storage tank fees are a listed tax under IC § 6-8.1-1-1. As a listed tax, the Indiana Department of Revenue (Department) collects the fees and associated penalties that IDEM assesses. The Department's collection procedures apply.

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

The Taxpayer argues that it should not have to pay the penalty because it relied on professionals to effectuate all registrations. The Taxpayer's agreement with its general contractor required the general contractor to register with all the appropriate governmental agencies. The Taxpayer argues that it did not know of the requirement to register for the underground storage tank program. As soon as the Taxpayer learned that the general contractor did not register the corporation in the underground storage tank program, the Taxpayer corrected the oversight.

IDEM does not have discretion in the imposition of the penalty. The law clearly states that the penalty shall be imposed if the fees are not timely paid. In this case, the Taxpayer did not timely pay the underground storage tank fees for 2006 and 2007. Therefore, the penalty was properly imposed.

FINDING

The Taxpayer's protest to the imposition of the penalty is denied.

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