

**Letter of Findings Number: 09-0800P
Underground Storage Tank Fees
For the Tax Years 2003-2007**

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ISSUE

I. Underground Storage Tank Fee – Imposition.

Authority: IC § 6-8.1-1-1; IC § 6-8.1-5-1; IC § 13-7-20-32; IC § 13-7-20-41; IC § 13-11-2-241; IC § 13-23-12-1; IC § 13-23-12-4; IC § 13-23-12-7; [328 IAC 1-3-3](#).

Taxpayer protests the imposition of penalties for unpaid underground storage tank fees.

STATEMENT OF FACTS

Taxpayer operates a "living history museum." At this museum are three underground storage tanks (USTs). Two of the tanks hold gasoline, but the third holds diesel fuel. In the spring of 2009, an employee of the Indiana Department of Environmental Management (IDEM) found that Taxpayer had not been paying an annual registration fee for the UST that holds diesel. Soon after, the Department assessed a total of \$5,000 in "environmental penalties." These environmental penalties consisted of: \$1,000 for 2003; \$1,000 for 2004; \$1,000 for 2005; \$1,000 for 2006; and \$1,000 for 2007. Taxpayer protests the assessment of the environmental penalties. Taxpayer did not request an administrative hearing and therefore the determination in this Letter of Findings is based on the information available in Taxpayer's protest file.

I. Underground Storage Tank Fee – Imposition.

DISCUSSION

IC §13-23-12-1 imposes a fee on underground storage tanks. Although the IDEM regulates underground storage tanks for the State, IC §13-23-12-4 mandates that the Department of Revenue collect and deposit the underground storage tank fees. IC § 6-8.1-1-1 defines "listed tax" to include "the underground storage tank fee ([IC 13-23](#))." 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 and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c).

The fee on USTs 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.

The amount of the registration fee is found in subsection of IC § 13-23-12-1 as follows:

(b) The annual registration fee required by this section is as follows:

(1) Ninety dollars (\$90) for each underground petroleum storage tank.

(2) Two hundred forty-five dollars (\$245) for each underground storage tank containing regulated substances other than petroleum.

Prior to 1998, the annual registration fee was two hundred ninety dollars (\$290) (See IC §§ 13-7-20-32 and 13-7-20-41, as in effect through 1996, when it was repealed by P.L.1-1996, SEC.13; and IC § 13-23-12-1, as in effect through 1998, thereafter amended by P.L.212-1999, SEC.4).

If an owner of an UST does not pay their annual registration fees described in IC § 13-23-12-1, the owner "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." IC § 13-23-12-7(a). This penalty is referred to as the "environmental penalty." [328 IAC 1-3-3\(e\)\(3\)](#). The Indiana Administrative Code clarifies this penalty, stating that:

For sites with tanks that are registered but not all fees have been completely paid, the penalty will be calculated at one thousand dollars (\$1,000) per petroleum underground storage tank for each missed fee payment. If a quarterly fee payment is missed, the penalty is applied at one-fourth (¼) the amount listed in the table.

[328 IAC 1-3-3\(f\)\(2\)\(B\)](#).

Because taxpayer annually paid its registration fees on two of the three USTs, but had not paid the registration fees on the UST at issue since the 1990s, the Department assessed environmental penalties in the amount of: \$1,000 for 2003; \$1,000 for 2004; \$1,000 for 2005; \$1,000 for 2006; and \$1,000 for 2007.

Taxpayer argues that the diesel fuel was used to power vehicles in farming operations, and therefore the UST was exempt from annual registration fees and is not subject to environmental penalties. IC § 13-11-2-241

defines "Underground storage tank" as:

- (a) "Underground storage tank", for purposes of... [IC 13-23](#), means one (1) tank or a combination of tanks, including underground pipes connected to the tank or combination of tanks:
 - (1) that is used to contain an accumulation of regulated substances; and
 - (2) the volume of which, including the volume of the underground connected pipes, is at least ten percent (10%) beneath the surface of the ground.
- (b) The term does not include any of the following:
 - (1) A farm or residential tank with a capacity of not more than one thousand one hundred (1,100) gallons that is used for storing motor fuel for noncommercial purposes.

...

In the information provided, Taxpayer has neither shown that it is a farm, nor that the UST at issue has "a capacity of not more than one thousand one hundred (1,100) gallons," nor that fuel is stored for noncommercial purposes. Taxpayer has not met its burden of proof that the tank at issue was not a UST for the purposes of IC § 13-23, and therefore Taxpayer has not proven that the environmental penalties were improperly assessed.

Taxpayer also presents equitable reasons to waive the environmental penalties. Since the Department must make its determination on legal grounds, the Department declines the invitation to waive the penalties based on equitable reasons.

FINDING

Taxpayer's protest is denied.

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