

Letter of Findings Number: 09-0839
Underground Storage Tank Fees
For the Tax Years 1999-2008

NOTICE: Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Underground Storage Tank Fee – Imposition.

Authority: IC § 6-8.1-1-1; IC § 6-8.1-5-1; IC § 13-23-8-4; IC § 13-23-12-1; IC § 13-23-12-4; IC § 13-23-12-7; [28 IAC 1-1-9](#); [328 IAC 1-3-3](#).

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

II. Tax Administration – Ten Percent Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the negligence penalty.

III. Tax Administration – Interest.

Authority: IC § 6-8.1-10-1.

Taxpayer protests the interest assessed.

STATEMENT OF FACTS

Taxpayer owns a gas station, which was built in 1999. At this facility are two underground storage tanks (USTs) that have been at the facility since it opened in 1999. Taxpayer leased the gas station to another company in 2006, but when the lessee attempted to register the USTs with the Indiana Department of Environmental Management (IDEM), it discovered that the tanks were never registered and that it was required to have paid annual UST registration fees. The Department assessed registration fees for each year from 1999 to 2007. The Department also assessed a 10 percent penalty and interest on each registration fee. Finally, the Department also assessed a total of \$60,000 in "environmental penalties." These environmental penalties consisted of: \$4,000 for 2003; \$8,000 for 2004; \$12,000 for 2005; \$16,000 for 2006; and \$20,000 for 2007. Taxpayer submitted payment to cover the required registration fees, but protests the assessment of the remaining penalties and interest on the registration fees, and all environmental penalties. An administrative hearing was held, and this Letter of Finding results.

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.

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 containing only tanks that were never registered, or sites containing only tanks for which no tank fees were paid when due, the penalty will be calculated at two thousand dollars (\$2,000) under [IC 13-23-12-7\(a\)](#) per petroleum underground storage tank per year that passes after each year's fee is due.

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

Because taxpayer owned two USTs, the Department assessed \$4,000 for 2003; \$8,000 for 2004; \$12,000 for 2005; \$16,000 for 2006; and \$20,000 for 2007. This is because the penalty is cumulative. Per IC § 13-23-12-7(a), the penalty is "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**). For example, if a fee on one of the tanks that was due in 2004 was not paid until 2008, then \$2,000 is assessed **for each year that passed** before that 2004 year fee was paid (\$2,000 for 2004; \$2,000 for 2005; \$2,000 for 2006; and \$2,000 for 2007). The same is true for the 2005 fee if it was not paid until 2008, the 2006 fee if it was not paid until 2008, and so on. With that being the case, the environmental penalties were assessed as illustrated below:

	2003	2004	2005	2006	2007
2003 Fees	\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00
2004 Fees		\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00
2005 Fees			\$4,000.00	\$4,000.00	\$4,000.00
2006 Fees				\$4,000.00	\$4,000.00
2007 Fees					\$4,000.00
Subtotal	\$4,000.00	\$8,000.00	\$12,000.00	\$16,000.00	\$20,000.00

Taxpayer argues that not only did it register the USTs with IDEM in 1999 as required, but that it had already made the UST registration fee payments as well. However, Taxpayer maintains that its records were destroyed as the result of a flood in 2008, so it cannot show that it made any payments to the Department. Neither the Department nor IDEM has any record of the UST registration forms being filed until October 2008 or any of the UST registration fee payments at issue being paid until 2009. Therefore, without records to the contrary from Taxpayer, the Taxpayer cannot meet its burden of proof to show that the fees were not paid.

Alternatively, Taxpayer contends that if the fee payments had not been made, the failure to do so could not have been their fault, because they did not know about the UST registration fee requirements. Taxpayer states that since they paid other fees or taxes to the State, presumably they would not have deliberately avoided paying this one fee; especially when there was nothing to gain from not paying the \$180 in fees each year. Be that as it may, ignorance of the law is no excuse for not paying what is owed to the State. Since the annual registration fees were not paid, the environmental penalties were properly assessed.

Taxpayer makes the argument that the State was aware of the USTs' existence, and that Taxpayer should have been billed much earlier. Taxpayer contends that someone from the State had been out to the gas station before, and furthermore, that the results of a pressure test were sent to IDEM. Even if one could argue that the knowledge of one agency of the State that the USTs existed imputes knowledge to all other agencies of the State, or that submitting one document to IDEM constitutes a de facto registration of USTs with IDEM, this is beside the point. Taxpayer still did not pay the annual registration fees, and therefore the environmental penalties were properly assessed.

Taxpayer raises other arguments relating to the fairness of the penalty. Since the Department must make its determination on legal grounds, the Department cannot reduce or waive the penalties for equitable reasons. The penalty has been assessed in accordance with what is provided for in the statute as passed by the legislature.

FINDING

Taxpayer's protest is denied.

II. Tax Administration – Ten Percent Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. **Ignorance of the listed tax laws, rules and/or regulations is treated as negligence.** Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer. (**Emphasis added**)

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#)(c) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;

- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has not established that its failure to pay the assessed tax was due to reasonable cause rather than negligence.

FINDING

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

III. Tax Administration – Interest.

DISCUSSION

Taxpayer protests the interest assessed and argues that it is an unfair burden, given that he was not informed of the relevant law.

Taxpayers who fail to file a return, to pay taxes, or who "incurs a deficiency upon a determination by the department," are subject to interest on the nonpayment. IC § 6-8.1-10-1(a). Interest continues to accrue until final payment is made. IC § 6-8.1-10-1(e) does not allow the waiver of interest by statute.

Taxpayer has not provided documentation in support of its protest of the imposition of interest, but more importantly, the Department is not authorized to waive interest under IC § 6-8.1-10-1(e). As such, the Department finds the assessment of interest proper and denies the interest protest.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protest is denied.

Posted: 02/24/2010 by Legislative Services Agency

An [html](#) version of this document.