

**Letter of Findings Number: 09-0998P
Underground Storage Tank Fees
For the Tax Years 2003-2007**

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ISSUE

I. Underground Storage Tank Fee – Imposition.

Authority: 42 U.S.C. § 6991a; IC § 6-8.1-1-1; IC § 6-8.1-5-1; IC § 13-23-12-1; IC § 13-23-12-4; IC § 13-23-12-7; 40 CFR Part 280, Appendix II; [328 IAC 1-3-3](#).

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

STATEMENT OF FACTS

Taxpayer owns a convenience store. Until 1998, there were three underground storage tanks (USTs) at this facility, at which point a fourth tank was upgraded to a UST. Taxpayer believes that the fourth UST was registered with the Indiana Department of Environmental Management (IDEM) in 1999. In 2009, Taxpayer discovered that it had not been paying an annual registration fee on the fourth UST, and claims to have reported that fact to IDEM. In November 2009, the Department assessed registration fees for each year from 1999 to 2008 for the fourth UST. The Department also assessed a 10 percent penalty and interest on each fee. Finally, the Department also 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.

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 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 three of the four USTs, but had not paid the registration fees on the UST at issue since 1999, 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 contractor that upgraded the fourth UST mailed State Form 45223 ("45223 form"), the "Notification for Underground Storage Tanks" form, to IDEM in order to register this fourth UST on or around February 12, 1999. A copy of this form was provided prior to the hearing. Taxpayer concedes that it has no records to prove that the form was filed; however, other forms it submitted to IDEM have been received.

IC § 13-23-12-6 states that:

[a]t least thirty (30) days before payment of a fee is due in accordance with the schedule established under section 3 of this chapter, the department of state revenue shall **attempt to notify** each owner of an underground storage tank **who has submitted notification to the department as required under 42 U.S.C. 6991a(a)** of the requirements of this chapter. **(Emphasis added).**

42 U.S.C. § 6991a(a) states that:

(a) Underground storage tanks

(1) Within 18 months after November 8, 1984, each owner of an underground storage tank shall notify the State or local agency or department designated pursuant to subsection (b)(1) of this section of the existence of such tank, specifying the age, size, type, location, and uses of such tank.

...

(3) Any owner which brings into use an underground storage tank after the initial notification period specified under paragraph (1), shall notify the designated State or local agency or department within thirty days of the existence of such tank, specifying the age, size, type, location and uses of such tank.

...

(5) Beginning thirty days after the Administrator prescribes the form of notice pursuant to subsection (b)(2) of this section and for eighteen months thereafter, any person who deposits regulated substances in an underground storage tank shall reasonably notify the owner or operator of such tank of the owner's notification requirements pursuant to this subsection.

(6) Beginning thirty days after the Administrator issues new tank performance standards pursuant to section 6991b(e) of this title, any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of such tank of the owner's notification requirements pursuant to this subsection.

IDEM is designated as the local agency in 40 CFR Part 280, Appendix II. The form that Taxpayer presented is a copy apparently filled out in 1999 by the seller of the UST. Unfortunately, IDEM has no record of the 45223 form being filed in 1999, and without a receipt or other concrete evidence, there is no way to prove that Taxpayer filed the 45223 form at that time.

The Department can only attempt to notify taxpayers that they owe an annual registration fee if they file the 45223 form with IDEM. Since IDEM has no record that Taxpayer filed the 45223 form with IDEM in 1999, the Department was not aware that it should have attempted to notify Taxpayer that it owed an annual registration fee on the fourth UST. It stands to reason that Taxpayer should have been aware that the bills that were being sent to Taxpayer for the annual UST registration fees were only for three USTs, and Taxpayer concedes that its accounting department did not realize that the fee was not being paid on the fourth UST. Taxpayer believes that this was an honest mistake, and that Taxpayer was not trying to hide anything. However, the fact of the matter is that there is no record of the 45223 form being filed with IDEM, and Taxpayer should have noticed that the fees were not being paid for the fourth UST. Therefore, since the fees were not paid, the environmental penalties have been properly 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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