

**Letter of Findings Number: 10-0488P
Underground Storage Tank Fees
For the Tax Years 1995-2009**

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ISSUE

I. Underground Storage Tank Environmental Penalty – 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 § 13-23-12-1; IC § 13-23-12-4; IC § 13-23-12-7; [28 IAC 1-3-3](#).

Taxpayer protests the imposition of environmental 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 imposition of interest.

STATEMENT OF FACTS

Taxpayer owns and operates a gas station and mini-mart. At this facility are two underground storage tanks (USTs). The facility was built in 1995, and Taxpayer purchased the facility in July 2003. However, it was not until 2010 that Indiana Department of Environmental Management (IDEM) determined that Taxpayer had not paid an annual UST registration fee on the second compartment of one of the USTs that had two compartments. IDEM requested that the Indiana Department of Revenue (the Department) assess registration fees for each year from 1995 to 2009. The Department also assessed a 10 percent negligence penalty and interest. Finally, the Department also assessed a total of \$6,000 in "environmental penalties." These environmental penalties consisted of: \$1,000 for 2003; \$1,000 for 2004; \$1,000 for 2005; \$1,000 for 2006; \$1,000 for 2007; and \$1,000 for 2008. Taxpayer does not dispute that it owes the required registration fees. However, Taxpayer protests the assessment of a 10 percent negligence penalty and interest and the assessment of all environmental penalties. Taxpayer did not request a hearing. The Letter of Findings was written based on the materials in the file.

I. Underground Storage Tank Environmental Penalty – Imposition.

DISCUSSION

IC §13-23-12-1 imposes a fee on underground storage tanks. Although the Indiana Department of Environmental Management (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).

IC § 13-23-12-1(c) provides that "[i]f an underground storage tank consists of a combination of tanks, a separate fee shall be paid for each tank." During a recent IDEM inspection in 2010, the inspector determined that one of the USTs had two compartments, but that only one annual registration fee for the two compartments was paid each year. Since Taxpayer had only been paying one annual registration fee for the two compartments, IDEM requested that the Department assess a registration fee for each year from 1995 to 2009 for the second

compartment.

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 USTs, but had not paid the registration fees on the second compartment of the partitioned UST at issue since 1995, 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; \$1,000 for 2007; and \$1,000 for 2008.

Taxpayer argues that although it knew that the UST at issue had two compartments, Taxpayer was not aware that an annual registration fee was due on both compartments. Taxpayer further asserts that IDEM inspectors in the past had noted that there were only two USTs. It was not until 2005 that an IDEM inspector noted that the second UST actually had two compartments, and even then, IDEM did not begin billing Taxpayer for the second compartment until 2010. Taxpayer provided various IDEM inspection reports to substantiate their claims. Taxpayer therefore concludes that it should not be penalized for not paying an annual registration fee when IDEM had first told Taxpayer that there were only two USTs, and even when an IDEM inspector determined that one of the USTs had two compartments, continued to bill them for only two annual registration fees.

Taxpayer's reasons to waive the environmental penalties rely on equitable grounds. Since the Department must make its determination on legal grounds, the Department cannot reduce the penalties as requested. Taxpayer did not pay an annual registration fee on the second compartment, and therefore the assessment of both the unpaid fees and the environmental penalties is legally correct based on IC § 13-23-12-1, IC § 13-23-12-7(a), and [328 IAC 1-3-3\(f\)\(2\)\(B\)](#).

FINDING

Taxpayer's protest is respectfully denied.

II. Tax Administration – Ten Percent Negligence Penalty.

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty, requesting that it be waived.

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.

[45 IAC 15-11-2\(c\)](#) provides that:

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.

In this case, Taxpayer incurred a deficiency which the Department determined was due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to a penalty under IC § 6-8.1-10-2.1(a).

Taxpayer has sufficiently established that its failure to pay the annual registration fee was due to reasonable

cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest is sustained.

III. Tax Administration – Interest.

DISCUSSION

The Department assessed interest on the tax liabilities. Taxpayer protests this imposition of interest.

IC § 6-8.1-10-1(a) provides, as follows:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

Pursuant to IC § 6-8.1-10-1(e), the Department does not have the authority to waive the interest. Therefore, Taxpayer's protest is denied.

FINDING

Taxpayer's protest on the imposition of interest is respectfully denied.

SUMMARY

For the reasons discussed above, Taxpayer's protest on the imposition of environmental penalties and interest is respectfully denied. Taxpayer's protest on the imposition of negligence penalty is sustained.

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