

Letter of Findings Number: 10-0572
Underground Storage Tank Fees
For the Tax Years 2003-2008

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ISSUES

I. Underground Storage Tank Environmental Penalty – 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 § 13-23-12-6; IC § 13-23-12-7; 40 CFR Part 280, Appendix II; [328 IAC 1-3-3](#).

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

STATEMENT OF FACTS

Taxpayer owns a gas station. At this facility are evidently three underground storage tanks (USTs). Taxpayer was recently notified that the USTs were never registered with the Indiana Department of Environmental Management (IDEM) and that it was required to have paid annual UST registration fees. The Department assessed registration fees for each year from 2002 to 2009. The Department also assessed a 10 percent negligence penalty and interest on each registration fee. Finally, the Department also assessed a total of \$126,000 in "environmental penalties." These environmental penalties consisted of: \$6,000 for 2003; \$12,000 for 2004; \$18,000 for 2005; \$24,000 for 2006; \$30,000 for 2007; and \$36,000 for 2008. Taxpayer submitted payment to cover the required registration fees, but protests the assessment of the remaining 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 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 (b) 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 three USTs, the Department assessed \$6,000 for 2003; \$12,000 for 2004; \$18,000 for 2005; \$24,000 for 2006; \$30,000 for 2007; and \$36,000 for 2008. 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	2008
2003 Fees	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00
2004 Fees		\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00
2005 Fees			\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00
2006 Fees				\$6,000.00	\$6,000.00	\$6,000.00
2007 Fees					\$6,000.00	\$6,000.00
2008 Fees						\$6,000.00
Subtotal	\$6,000.00	\$12,000.00	\$18,000.00	\$24,000.00	\$30,000.00	\$36,000.00

Taxpayer argues they believed it was properly registering the USTs when it filed State Form 8451, the Application for Storage Facilities for Flammable and Combustible Liquids and Gases, with the Indiana Department of Fire and Building Services back in 2000. However, it was not until recently that Taxpayer understood that it was required to have filed State Form 45223 ("45223 form"), the "Notification for Underground Storage Tanks" form, with IDEM. Taxpayer classifies this as an honest mistake due to this being the first and only gas station that Taxpayer has purchased in Indiana.

Regardless of this mistake, 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. The 45223 form must be filed with IDEM in order to register the USTs. 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 Department can only attempt to notify taxpayers that they owe an annual registration fee if they file the 45223 form with IDEM. Since Taxpayer acknowledges that it did not file the 45223 form with IDEM until recently, the Department was not aware that it should have attempted to notify anyone that it owed annual registration fees.

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 Indiana legislature.

FINDING

Taxpayer's protest is denied.

Posted: 02/23/2011 by Legislative Services Agency

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