

**Letter of Findings Number: 10-0544**  
**Underground Storage Tank Fees**  
**For the Tax Years 2008**

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**ISSUES**

**I. Underground Storage Tank Environmental Penalty – Imposition.**

**Authority:** IC § 6-8.1-1-1; IC § 6-8.1-5-1; IC § 13-11-2-150; [IC 13-23-8](#); IC § 13-23-12-1; IC § 13-23-12-4; IC § 13-23-12-6; IC § 13-23-12-7; [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 at one time not 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 2008. The Department also assessed a 10 percent negligence penalty and interest on the fees. Finally, the Department also assessed a total of \$4,000 in "environmental penalties." These environmental penalties are apparently for the nonpayment of the fees in 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 owns two USTs, the Department assessed \$4,000 for 2008. 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**).

Taxpayer maintains that it purchased the facility in March 2009, which means that it did not own the USTs prior to that time, and therefore it does not owe the environmental penalties for the year 2008. Taxpayer argues that is not liable for the environmental penalties associated with the USTs owed during the period prior to its ownership. Taxpayer also asserts that the environmental penalties assessed to the full extent is arbitrary.

IC § 13-11-2-150(a)(1)(A) describes an "owner" of a UST to mean "a person who owns the underground storage tank." In support of Taxpayer's contention that it was not the owner of the USTs prior to 2009, Taxpayer

submitted a copy of the sublease, showing it became sublessor of the property in March 2009.

Taxpayer has clearly demonstrated that it was not the owner of the USTs prior to 2009. Therefore, the taxpayer is not responsible for the payment of the environmental penalties due for the year 2008. However, Taxpayer is admonished that if the environmental penalties are not paid in full, Taxpayer or any future owner will not be eligible for full payments from the Excess Liability Trust Fund (ELTF) in the event that there is a gasoline spill or other environmental problem resulting from Taxpayer's underground storage tanks.

IC § 13-23-8 details the process for claiming monies from the ELTF. Further guidance is found in [328 IAC 1-3-3](#). With regards to the whether an UST owner (or operator) may make a claim for reimbursement, [328 IAC 1-3-3\(a\)](#) provides in pertinent part that:

A person listed in section 1 of this rule shall comply with the following for a claim for reimbursable costs or a third party liability claim to be considered for reimbursement from the fund by the administrator:

...

(3) Pay all past and currently due fees under [IC 13-23-12-1](#) and all interest **and penalties that are due under subsections (e) and (f)**.

(4) For a person who acquires ownership in accordance with subsection (d), make timely payment of all past due tank fees, interest, and penalties in accordance with subsection (f) to make a claim for reimbursable costs for any site characterization or corrective action related to a release that is first suspected, discovered, or confirmed after the payment of all past and currently due fees, interest, and penalties. (**Emphasis added**).

This is meant to include environmental penalties, regardless of whether the current owner was the owner of the USTs during the time period that the environmental penalty was assessed. Therefore, if this environmental penalty is not paid, neither Taxpayer nor any future owner will be eligible for full payments from the ELTF.

#### **FINDING**

Taxpayer's protest is sustained.

*Posted: 03/23/2011 by Legislative Services Agency*

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