

Letter of Findings Number: 43-20100591P
UST Tax
For Tax Years 2005-09

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ISSUES

I. Underground Storage Tank Fees—Imposition.

Authority: IC § 6-8.1-5-1; IC § 13-23-12-1.

Taxpayer protests the imposition of underground storage tank fees and interest thereon.

II. Underground Storage Tank Nonpayment Penalties—Imposition.

Authority: IC § 13-23-12-7.

Taxpayer protests the imposition of nonpayment penalties.

STATEMENT OF FACTS

Taxpayer is an Indiana business which operates a gas station. In September of 2010, The Indiana Department of Environmental Management ("IDEM") issued proposed assessments for Underground Storage Tank ("UST") fees, nonpayment penalties, and interest for the tax years 2005, 2006, 2007, 2008, and 2009. Since UST fees and the related penalties and interest are listed taxes, as defined by IC § 6-8.1-1-1, the Indiana Department of Revenue ("Department") has the authority to hear protests regarding UST fees, penalties, and interest. Taxpayer protests that it paid the fees on time and that no fees, penalties, or interest are due. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Underground Storage Tank Fees—Imposition.

DISCUSSION

Taxpayer protests that it does not owe UST fees for the tax years 2005-09. Taxpayer also protests the imposition of interest on those fees. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The relevant statute for UST fees is IC § 13-23-12-1, which states:

(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.

(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.

(c) If an underground storage tank consists of a combination of tanks, a separate fee shall be paid for each tank.

Since Taxpayer has USTs, and since IDEM's records did not show payments for those tanks for those years, IDEM issued proposed assessments for these fees for the years at issue.

As part of the protest process, Taxpayer was able to provide sufficient documentation to establish that it did pay the UST fees and that the payments were made in a timely manner. Therefore, Taxpayer has met the burden of proving the proposed assessments wrong, as required by IC § 6-8.1-5-1(c). Since there were no fees due, there is also no interest due on those fees.

FINDING

Taxpayer is sustained.

II. Underground Storage Tank Nonpayment Penalties—Imposition.

DISCUSSION

Taxpayer protests the imposition of nonpayment penalties for the years in question. The relevant statute is IC § 13-23-12-7, which states:

(a) Except as provided in subsection (e), an owner of an underground storage tank who:

(1) is required to pay the fee under section 1 of this chapter; and

(2) fails to pay the fee when due as established under section 2 of this chapter;

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.

(b) Except as provided in subsection (c), each penalty assessed under this section and collected from the owner of an underground petroleum storage tank shall be deposited as follows:

(1) Fifty percent (50[percent]) shall be deposited in the petroleum trust fund.

(2) Fifty percent (50[percent]) shall be deposited in the excess liability trust fund.

(c) Penalties assessed under this section and collected from owners of underground storage tanks used to contain regulated substances other than petroleum shall be deposited in the hazardous substances response trust fund.

(d) The penalty set forth in this section is in addition to the penalties that may be imposed for the violation of a criminal law or under the following:

(1) [IC 13-23-14-2](#).

(2) [IC 13-23-14-3](#).

(3) [IC 13-23-14-4](#).

(4) [IC 13-30-4](#).

(5) [IC 13-30-5](#).

(6) [IC 13-30-8](#).

(e) If an owner described in subsection (a) registered an underground storage tank before January 1, 2004, the penalty established in subsection (a) may not be assessed against the owner for any failure to pay an annual registration fee under section 1 of this chapter:

(1) in connection with the underground storage tank; and

(2) that was due before January 1, 2004.

As provided above in Issue I, Taxpayer has established that it did pay the UST fees on time for the years at issue. Therefore, the penalties allowed under IC § 13-23-12-7(a) are not applicable in this case.

FINDING

Taxpayer's protest is sustained.

SUMMARY

Taxpayer is sustained on Issue I regarding the imposition of UST fees and interest. Taxpayer is sustained on Issue II regarding the imposition of nonpayment penalties.

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