

Letter of Findings Number: 43-20110395
Underground Storage Tank Registration
For Tax Years 2009-10

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ISSUE

I. Underground Storage Tank Fee – Environmental Penalty.

Authority: IC §13-23-12-1; IC § 13-23-12-6; IC § 13-23-12-7; [328 IAC 1-3-3](#).

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

STATEMENT OF FACTS

Taxpayer operates a gas station and convenience store in Indiana. Taxpayer purchased four underground storage tanks ("UST"), which were installed at Taxpayer's gas station in 2008. In 2011, the Indiana Department of Revenue ("Department") issued proposed assessments for annual UST fees, penalties, and interest for the years 2009 and 2010. Taxpayer paid the required fees, the Department's statutorily mandated 10 percent penalty, and interest. However, in a separate billing, the Department also assessed a total of \$16,000 in "environmental penalties" in the amounts of \$8,000 for 2009 and \$8,000 for 2010. Taxpayer protests the assessment of these environmental penalties. An administrative hearing was held, and this Letter of Finding results. Additional facts will be provided as required.

I. Underground Storage Tank Fee – Environmental Penalty.

DISCUSSION

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

The first relevant statute 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.

(Emphasis added).

IC § 13-23-12-7(a) states:

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.

Thus, if an owner of an UST does not pay the 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\(f\)\(2\)\(A\)](#) (eff. April 22, 2011), in relevant part, provides:

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. The penalty will be calculated by multiplying the total number of years that have passed since the fee was due by the total number of tanks and multiplying the result by two thousand dollars (\$2,000).

Taxpayer protests that the Department never sent bills for the annual registration fees as required by IC § 13-23-12-6, which states:

At 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.

Taxpayer provided documentation establishing that it notified the Indiana Department of Environmental Management ("IDEM") of the installation of the four USTs in 2008. Taxpayer also notified IDEM in 2011 when it underwent a name change. Taxpayer also provided affidavits from two employees with knowledge of Taxpayer's operations stating that the Department never sent notices of UST fees due for either 2009 or 2010. Taxpayer believes that the lack of Departmental notice required under IC § 13-23-12-6 should relieve it of the penalties imposed under IC § 13-23-12-7.

The environmental penalties at issue here were not assessed for failing to notify IDEM that Taxpayer had brought into use or service four new USTs. The environmental penalties in question were assessed because Taxpayer failed to pay two consecutive annual \$90 registration fees for its four USTs, all of which went unpaid until 2011. The annual registration fee is an obligation of the owner per IC § 13-23-12-1. There is no provision for nullification of the penalty imposed under IC § 13-23-12-7(a) based on the Department's noncompliance with the notification requirement under IC § 13-23-12-6.

Taxpayer also maintains that a timely payment of the fees was made once Taxpayer was notified that registration fees were owed, and makes other arguments relating to equity in support of its position that the fees should be waived. However, the penalties at issue were properly assessed pursuant to IC § 13-23-12-7 and will not be abated.

FINDING

Taxpayer's protest is denied.

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