

**Letter of Findings Number: 43-20120030**  
**Underground Storage Tank Fees**  
**For the Tax Years 1990-1997**

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**ISSUES**

**I. Underground Storage Tank Fees—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; [328 IAC 1-3-3](#).

Taxpayer protests the imposition of underground storage tank registration fees.

**II. Tax Administration—Interest.**

**Authority:** IC § 6-8.1-10-1.

Taxpayer protests the imposition of interest.

**III. Tax Administration—Negligence Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer purchased land in 2007 that contained three underground storage tanks (USTs). In September of 2011, the Department billed Taxpayer for unpaid UST registration fees for each year from 1990 to 1997. The Department also assessed a 10 percent negligence penalty and interest on each fee. Taxpayer protested the imposition of the fees, interest, and penalty. An administrative hearing was held, and this Letter of Finding results. Additional facts will be provided as necessary.

**I. Underground Storage Tank Fees—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 Indiana Department of Revenue ("Department") collect and deposit the UST 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 UST 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.

For the years at issue, 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).

Pursuant to the imposition statute, the UST annual registration fee is imposed on all USTs open and available for use on July 1 of that year. The party who owns the property during the tax period is the person liable for payment of the UST fees.

Taxpayer maintains that it purchased the facility in October 2007, which means that it did not own the USTs prior to that time, and therefore it does not owe unpaid annual registration fees for the years 1990 through 1997. Taxpayer argues that it is not liable for the environmental penalties associated with the USTs owed during the period prior to its ownership.

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 2007, Taxpayer submitted a deed of sale and various other documents, showing that it purchased the property in October 2007.

Taxpayer has clearly demonstrated that it was not the owner of the USTs prior to October 2007. Thus, Taxpayer was not the owner of the USTs on July 1 during the tax period 1990-1997. Therefore, Taxpayer is not responsible for the payment of the UST fees due for the years 1990-1997.

However, Taxpayer is admonished that if the annual registration fees 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 USTs.

IC § 13-23-8 details the process for claiming monies from the ELTF. Further guidance is found in [328 IAC 1-3](#). With regards to 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:

...

(6) Pay all:

(A) **past and currently due fees** under [IC 13-23-12-1](#); and

(B) interest and penalties that are due under subsections (e) and (f).

Tank fees under [IC 13-23-12-1\(a\)](#) must be paid on any tanks that are not closed in accordance with [329 IAC 9-6-1](#) and are operable or in temporary closure.

(7) 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 any fees or penalties, regardless of whether the current owner was the owner of the USTs during the time period that the fee or penalty was assessed. Therefore, if these registration fees are not paid, neither Taxpayer nor any future owner will be eligible for full payments from the ELTF.

#### FINDING

Taxpayer's protest is sustained with regards to the annual registration fee. However, Taxpayer is admonished that if the annual registration fees 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.

Taxpayer's protest file will be held in the legal division for 60 days. Within this sixty day period, Taxpayer must notify the Department in writing stating that it will either pay the fees to have access to payments from the ELTF fund or that it will not pay the fees. Taxpayer's decision will be given to IDEM for future ELTF fund considerations.

### II. Tax Administration–Interest.

#### DISCUSSION

The Department assessed interest on the unpaid UST annual registration fees. Taxpayer requested that the Department waive interest.

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

If a person... fails to pay the full amount of tax... 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.

#### FINDING

Taxpayer's protest of interest is respectfully denied.

### III. Tax Administration–Negligence Penalty.

#### DISCUSSION

Taxpayer requests that the Department abate the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

(1) fails to file a return for any of the listed taxes;

(2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

(4) fails to timely remit any tax held in trust for the state; or

(5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

[45 IAC 15-11-2\(b\)](#) further states:

"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.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2\(c\)](#), in part, as follows:

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.

Taxpayer has provided sufficient documentation demonstrating that the failure to pay tax was due to reasonable cause and not due to negligence.

#### **FINDING**

Taxpayer's request for abatement of the negligence penalty is sustained.

#### **SUMMARY**

For the reasons discussed above, Taxpayer's protest related to the unpaid UST annual registration fees is sustained. Taxpayer's protest of interest is respectfully denied. Taxpayer's protest of the imposition of the negligence penalty is sustained.

*Posted: 08/29/2012 by Legislative Services Agency*  
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