

**Letter of Findings Number: 43-20120537P
Underground Storage Tank Fees
For the Tax Years 1999-2011**

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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 is a School in Indiana. A waste water treatment plant and a small gas station are on the Taxpayer's property. At the gas station was one underground storage tank (UST). Taxpayer contacted the Indiana Department of Environmental Management (IDEM) to discuss whether to replace or improve the water plant. IDEM suggested that Taxpayer build a new plant. Taxpayer inquired about how to remove the tank properly because building the new plant would require Taxpayer to move the fueling station. Taxpayer discovered in 2012 that it was required to have paid an annual UST registration fee for 1999-2011. Taxpayer protests the environmental penalties, the Department's statutorily mandated ten percent penalty, and interest. 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

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

IC § 13-23-12-1 imposes a fee on underground storage tanks. Although the Indiana Department of Environmental Management (IDEM) regulates USTs for the State, IC § 13-23-12-4 mandates that the Indiana 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 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.

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.

IC § 13-11-2-150(a)(1)(A) describes an "owner" of a UST to mean "a person who owns the underground storage tank." IC § 13-23-12-1 states that "the owner of an underground storage tank that has not been closed before July 1... shall pay to the department of state revenue an annual registration fee." The UST-4 form states that "[i]f you were the legal owner as of July 1st of the current year, you are responsible for the yearly fees." Taxpayer does not dispute ownership.

FINDING

Taxpayer's protest is respectfully denied with regards to the environmental penalty.

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 was not aware that they needed to register the UST. Taxpayer called IDEM to get assistance to remove the tank properly. Taxpayer has provided sufficient documentation demonstrating that the failure to pay tax was due to reasonable cause and not due to negligence. IDEM visited Taxpayer's water plant annually for inspection purposes. IDEM did not inspect the gas station and did not inform Taxpayer of the need to register any tanks.

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 denied. Taxpayer's protest of interest is respectfully denied. Taxpayer's protest of the imposition of the negligence penalty is sustained.

