ISSUE REVIEW

Iowa Legislative Fiscal Bureau

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Underground Storage Tank Program Funding

ISSUE

The Underground Storage Tank (UST) Program is funded primarily from an allocation of motor vehicle Use Tax receipts. Current projections by the Legislative Fiscal Bureau and the UST Program administrator indicate the dedicated funding is more than sufficient to cover anticipated Program costs. The Legislature may wish to review UST Program funding during the 1998 Session.

AFFECTED AGENCIES

Underground Storage Tank Program

CODE AUTHORITY

Chapter 455G, Chapter 424,
and Section 423.24, Code of Iowa

BACKGROUND

The UST Program was established in HF 447 (Underground Storage Tank Act of 1989). The Act and Program funding have been amended several times during subsequent Legislative Sessions. Currently, the UST Program receives funding through two separate Use Tax allocations:

- Section 423.24(1)(a)(1), Code of Iowa, allocates $17.0 million annually. The allocation was originally contained in HF 2552 (Petroleum Storage Tank Act of 1990) and was set at $12.0 million. Subsequent amendments increased the amount to $17.0 million. The annual allocation does not sunset. This funding stream is dedicated in part to repayment of bonds issued through the UST Board to finance remedial cleanup. Chapter 424, Code of Iowa, establishes a diminution fee on petroleum stored in certain underground storage tanks. The fee is the equivalent of one cent per gallon, with the revenue deposited in the Road Use Tax Fund to reimburse that Fund for the Use Tax allocation. The diminution fee raised $18.6 million in FY 1997.
- Section 423.24(1)(a)(2), Code of Iowa, allocates a total of $105.0 million in motor vehicle Use Tax receipts from FY 1996 to FY 2003. This allocation is designated as

"marketability" funding. The allocation is to be used to finance cleanups at certain UST sites not eligible under the original program, commonly referred to as "innocent landowner" sites. A portion of the allocation is also available for the regular remediation Program.

The UST Program also receives funding from other sources, including the sale of bonds, interest, per-tank fees, and insurance premiums.

REASONS FOR EXCESS FUNDING

House File 508 (Underground Storage Tank Act of 1995), modified cleanup standards by allowing the use of Risk-Based Corrective Action (RBCA, or "Rebecca") cleanup standards. Although the financial impact of the adoption of RBCA standards is not yet fully determined, it is clear the total State cleanup cost for the UST Program will be substantially reduced from previous estimates. The cleanup savings is due to allowing responsible parties to leave more contamination at the site.

Also, the expenditure of State funds for cleanup has proceeded much slower than originally projected, allowing the Use Tax allocation to remain in UST Program accounts and generating unanticipated interest. Expenditure of funds has been slow for two main reasons:

- The cleanup requirements have changed several times.
- Unless the contamination poses a health or safety risk or the property has a high economic value, there is little incentive for the responsible party to proceed with the cleanup (responsible parties must pay a portion of the cleanup, which may cost the responsible party tens of thousands of dollars).

Two factors have reduced the need for innocent landowner funds:

- The State has negotiated payments from large oil companies exceeding $30.0 million. Section 455G.8(5), Code of Iowa, requires the net recoveries to be used for innocent landowner claims. This offsets the need for Use Tax funding for that portion of the Program.
- The number of innocent landowner claims received by the State have been far fewer than projected.

CURRENT SITUATION

At the end of FY 1997, the UST Program had $128.8 million in funds available (excluding Insurance and Loan Program reserves) to pay current and future claims. The latest estimate predicts the Program will have a substantial balance in FY 2011 when cleanup is complete (**Attachment 1**). Although the annual $17.0 million Use Tax allocation does not sunset, **Attachment 1** assumes the allocation will cease in FY 2011 when cleanup is projected to be complete.

ADDITIONAL REVENUE ISSUES

The Legislature should consider altering the UST program and its funding. In altering the funding, the following items should be considered:

- Money in the Unassigned Revenue Account ($87.3 million at the end of FY 1997) is available under bonding agreements for any lawful purpose. The Program currently uses the Fund for administrative expenses and to pay remedial benefits directly from the Fund when money acquired through bonding has been exhausted. The UST Board does not have plans to issue additional bonds.

- The original Use Tax allocation (currently $17.0 million annually) is pledged to repay bonds previously issued. Before this funding source can be reduced, the opinion of bonding attorneys should be sought.
- The additional Use Tax marketability allocation is not pledged to repay bonds. This funding can be reduced or eliminated without posing a threat to outstanding bond obligations. Under current law, the Program will receive $76.5 million from this allocation from FY 1999 through FY 2003.

ADDITIONAL EXPENSE ISSUES

At the December 1997 UST Board meeting, the Board considered four factors that may increase the projected cost of the Program:

- Responsible Party Remediation Co-Pay: Section 455G.9(4), Code of Iowa, provides remediation co-payment obligations for qualified responsible parties. Depending on the cost of cleanup required, the co-payment can exceed $100,000. The UST Board adopted a recommendation that the 1998 Legislative Session consider capping the co-payment required for most sites at $14,400. The projected cost of this action is $19.8 million.
- Expanding retroactive release benefits to the level of remedial release benefits: Section 455G.9(1)(a)(1), Code of Iowa, caps at $50,000 the benefits available for non-small business releases reported to the Department of Natural Resources from July 1, 1987, through May 4, 1989, (referred to as “retroactive” benefits because the leak was reported prior to adoption of the UST Program legislation). Remediation Program leaks reported after May 4, 1989, were eligible for additional benefits. The UST Board adopted a recommendation that the 1998 Legislative Session consider offering full remedial benefits to all retroactive sites. The projected cost of this action is $4.0 million to $5.8 million.
- No Further Action Fall-Back Fund: Section 455B.304(15), Code of Iowa, allows the DNR to issue No Further Action certificates to sites that have reduced contamination below a specified level. Once a site has been issued a certificate, the responsible party will not be required to finance additional cleanup associated with that leak. By default, if additional cleanup has to be done, the State will be required to provide financing. The UST Board adopted a recommendation that the 1998 Legislative Session consider establishing a Fund to provide a source of financing for these sites if additional cleanup is required. The projected cost of this action is $10.0 million.
- Abandoned Sites: Section 455G.9(d), Code of Iowa, requires the Program to pay 100.0% of corrective action and third-party liability expenses at a site acquired by a county for delinquent taxes. In the next year, an operator of a petroleum underground storage tank will not be able to refill a tank if financial responsibility (insurance) is not in force for that tank. It is predicted that many sites currently operating without insurance will close and will not have the financial ability to pay for cleanup. Many of these sites may then become county property through back tax procedures. Once acquired by a county, any contamination would become the responsibility of the State. This will occur under current law and does not require Board or Legislative action. The estimated cost of these sites is $30.8 million.

- Inaccurate Assumptions: Cleanup cost projections for current-law cleanup expenses under the remedial, retroactive, and innocent landowner programs total $152.1 million from FY 1998 through FY 2011. If those projections are inaccurate by 10.0%, a $24.9 million change in projected cost and associated interest will result. Also, if interest received on Program funds varies by 0.5% from the 5.5% used in the projections, a change in funding needed of approximately $15.0 million will result.

BUDGET IMPACT OPTIONS

If Program funding is not reduced, the UST Fund balance will continue to grow from the FY 1997 ending balance of $128.8 million to $325.9 million at the end of FY 2011, when all remediation is projected to be complete and only $12.1 million in bond payments remain (**Attachment 1**).

The Legislature should consider elimination of the marketability allocation at the end of FY 1998. This will reduce Use Tax receipts to the Program by $76.5 million. The projected FY 2011 ending balance would be $193.3 million. The amounts listed in the following options assume this action has been taken.

Further Reduce Use Tax Allocation: If no other changes are made to the Program, the annual $17.0 million Use Tax allocation could be eliminated beginning FY 2004. This would further reduce Use Tax receipts to the Program by $136.0 million. The projected FY 2011 ending balance would be $28.0 million. Because this Use Tax allocation is pledged to repay previously issued bonds, this action should not be taken without the consultation of bond attorneys. An escrow account would probably have to be established with sufficient funding to make all future bond payments.

Adopt UST Board Recommendations and Contingencies: The UST Board has identified $66.4 million in potential costs that either may become State liabilities under present law, or would become liabilities if the Board's recommendations are accepted by the Legislature. The projected FY 2011 ending balance would be $90.4 million.

Reduce the Current Fund Balance: The balance of all UST Program accounts (excluding the Insurance Account), is projected to be $146.8 million at the end of FY 1998. Over $80.0 million will be in the Unassigned Revenue Account. This Account is used for administrative expenses and to fund cleanup. The funds are not required to repay bonds and may be used for any lawful purpose. The Legislature could remove $50.0 million at the end of FY 1998 without undermining the Program's financial integrity.

Combination: Current projections indicate sufficient funding is available to:

- Eliminate marketability funding at the end of FY 1998.
- Adopt the UST Board's recommendations and contingencies.
- Withdraw $25.0 million from the Program for other purposes at the end of FY 1998.
- Eliminate the annual $17.0 million Use Tax allocation at the end of FY 2010 and establish an escrow account for future bond payments.
- Retain a balance of $15.6 million at the end of FY 2015 in case projections are inaccurate.

The projected annual financial impact on the UST Program is shown in **Attachment 2**.

STAFF CONTACT: Jeff Robinson (Ext. 16767)

UST PROGRAM FUNDING PROJECTION

Based on current law and assumptions
In millions of dollars

	Total	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Beg. Balance	$ 128.8	$ 128.8	$ 148.6	$ 162.2	$ 175.2	$ 188.0	$ 200.1	$ 206.3	$ 213.2	$ 221.2	$ 232.0	$ 245.9	$ 262.6	$ 282.3	$ 303.4	$ 325.9	$ 340.7	$ 356.4	$ 373.0
Use Tax	$ 238.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0				
Marketability	90.0	13.5	17.0	17.0	17.0	17.0	8.5												
Tank Fees	5.6	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4				
Net Cost Recovery	19.7	3.5	3.5	3.5	3.5	3.4	1.2	1.1											
Interest	240.7	7.7	8.2	8.9	9.6	10.3	11.0	11.3	11.7	12.2	12.8	13.5	14.4	15.5	16.7	17.9	18.7	19.6	20.5
Total Revenue	$ 594.0	$ 42.1	$ 46.1	$ 46.8	$ 47.5	$ 48.1	$ 38.1	$ 29.8	$ 29.1	$ 29.6	$ 30.2	$ 30.9	$ 31.8	$ 32.9	$ 34.1	$ 17.9	$ 18.7	$ 19.6	$ 20.5
Debt Service	$ 146.1	$ 9.5	$ 9.5	$ 9.6	$ 9.6	$ 9.7	$ 9.7	$ 9.6	$ 9.6	$ 9.6	$ 9.6	$ 9.5	$ 9.5	$ 9.5	$ 9.5	$ 3.1	$ 3.0	$ 3.0	$ 3.0
Admin & Other	28.9	2.3	2.3	2.3	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0				
Remedial Payments	140.3	8.5	17.9	19.1	20.6	22.0	18.2	10.3	8.5	6.7	4.7	2.7	0.6	0.4	0.1				
Innocent Landowner	11.8	0.8	1.0	1.5	2.0	2.0	2.0	1.0	1.0	0.5									
Global Opt-In	5.2	1.2	1.8	1.3	0.5	0.4													
Cap Co-Pay	0.0		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0						
Fall-Back Fund	0.0			0.0															
Retroactive	0.0		0.0	0.0	0.0	0.0													
Abandoned Sites	0.0				0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0						
Total Expenditures	$ 332.3	$ 22.3	$ 32.5	$ 33.8	$ 34.7	$ 36.1	$ 31.9	$ 22.9	$ 21.1	$ 18.8	$ 16.3	$ 14.2	$ 12.1	$ 11.9	$ 11.6	$ 3.1	$ 3.0	$ 3.0	$ 3.0
Transfers Out	$ 0.0	$ 0.0																	
Ending balance	$ 390.5	$ 148.6	$ 162.2	$ 175.2	$ 188.0	$ 200.1	$ 206.3	$ 213.2	$ 221.2	$ 232.0	$ 245.9	$ 262.6	$ 282.3	$ 303.4	$ 325.9	$ 340.7	$ 356.4	$ 373.0	$ 390.5

FY 97 Balances	
Revenue Fund	7.2
Capital Reserve	9.7
Loan Reserve	1.5
Unassigned	87.3
Remedial	3.8
Innocent L.O.	11.1
Marketability	8.2
Total	$ 128.8

Rows and columns may not add due to rounding.

UST PROGRAM FUNDING PROJECTION

Sample funding change proposal
In millions of dollars

	Total	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Beg. Balance	$ 128.8	$ 128.8	$ 123.6	$ 109.8	$ 90.1	$ 77.8	$ 61.3	$ 46.3	$ 37.5	$ 29.1	$ 23.3	$ 21.6	$ 22.0	$ 25.7	$ 32.6	$ 23.2	$ 21.4	$ 19.6	$ 17.7
Use Tax	$ 221.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0	$ 17.0					
Marketability	13.5	13.5																	
Tank Fees	5.6	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4				
Net Cost Recovery	19.7	3.5	3.5	3.5	3.5	3.4	1.2	1.1											
Interest	50.7	7.7	6.8	6.0	5.0	4.3	3.4	2.5	2.1	1.6	1.3	1.2	1.2	1.4	1.8	1.3	1.2	1.1	1.0
Total Revenue	$ 310.5	$ 42.1	$ 27.7	$ 26.9	$ 25.9	$ 25.1	$ 22.0	$ 21.0	$ 19.5	$ 19.0	$ 18.7	$ 18.6	$ 18.6	$ 18.8	$ 2.2	$ 1.3	$ 1.2	$ 1.1	$ 1.0
Debt Service	$ 146.1	$ 9.5	$ 9.5	$ 9.6	$ 9.6	$ 9.7	$ 9.7	$ 9.6	$ 9.6	$ 9.6	$ 9.6	$ 9.5	$ 9.5	$ 9.5	$ 9.5	$ 3.1	$ 3.0	$ 3.0	$ 3.0
Admin & Other	28.9	2.3	2.3	2.3	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0				
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Innocent Landowner	11.8	0.8	1.0	1.5	2.0	2.0	2.0	1.0	1.0	0.5									
Global Opt-In	5.2	1.2	1.8	1.3	0.5	0.4													
Cap Co-Pay	19.8		5.0	2.0	2.0	2.0	2.0	2.0	1.0	1.0	1.0	1.0	0.8						
Fall-Back Fund	10.0			10.0															
Retroactive	5.8		4.0	0.8	0.5	0.5													
Abandoned Sites	30.8				1.0	3.0	3.0	5.0	5.8	5.0	3.0	3.0	2.0						
Total Expenditures	$ 398.7	$ 22.3	$ 41.5	$ 46.6	$ 38.2	$ 41.6	$ 36.9	$ 29.9	$ 27.9	$ 24.8	$ 20.3	$ 18.2	$ 14.9	$ 11.9	$ 11.6	$ 3.1	$ 3.0	$ 3.0	$ 3.0
Transfers Out	$ 25.0	$ 25.0																	
Ending balance	$ 15.6	$ 123.6	$ 109.8	$ 90.1	$ 77.8	$ 61.3	$ 46.3	$ 37.5	$ 29.1	$ 23.3	$ 21.6	$ 22.0	$ 25.7	$ 32.6	$ 23.2	$ 21.4	$ 19.6	$ 17.7	$ 15.6

FY 97 Balances	
Revenue Fund	7.2
Capital Reserve	9.7
Loan Reserve	1.5
Unassigned	87.3
Remedial	3.8
Innocent L.O.	11.1
Marketability	8.2
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