

**Letter of Findings Number: 05-0180**  
**Income Tax**  
**For Tax Years 2002**

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**ISSUE**

**I. Gross Income Tax–Satellite Transmissions**

**Authority:** [45 IAC 1.1-2-5](#)

Taxpayer protests imposition of gross income tax on income from servicing satellite transmissions.

**II. Tax Administration–Negligence Penalty**

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

Taxpayer protests imposition of a ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is an out-of-state business which provides broadband satellite network solutions for its customers. As the result of an audit, the Indiana Department of Revenue ("Department") determined that taxpayer was providing services subject to Indiana gross income tax. The Department issued proposed assessments for gross income tax and penalty. Taxpayer protests the imposition of gross income tax and penalty. Further facts will be supplied as required.

**I. Gross Income Tax–Satellite Transmissions**

**DISCUSSION**

Taxpayer places satellite uplink equipment in businesses in Indiana. The businesses are typically convenience stores and similar businesses, all of which are headquartered outside Indiana. The equipment transmits data to a satellite where the data is retransmitted to an out-of-state location. The data is then transmitted along land lines to taxpayer's place of business outside of Indiana. Taxpayer evaluates the data and sends its results back along the same route to the Indiana location from where it originated.

In determining that the services were subject to gross income tax, the Department referred to [45 IAC 1.1-2-5](#), which states in relevant part:

(a) Gross income derived from the provision of a service of any character within Indiana is subject to the gross income tax. This is true even when a service contract calls for the furnishing of tangible personal property in the performance of the contract. The property is used in Indiana in furtherance of the contract and is not exempt under [IC 6-2.1-3-3](#). The property is intrinsically related to and inherently part of the services to be performed. In other words, the property is essential to and inseparable from the performance of the contract.

...

(f) The following are examples of services being performed within Indiana:

...

(2) The sale of telecommunications, including telephone, telegraph, and noncable television, if the telecommunications originate or terminate in Indiana and are charged to an Indiana address, and the charges are not taxable under the laws of another state.

[45 IAC 1.1-2-5\(f\)\(2\)](#) states that the all three factors must be satisfied to qualify as a sale of telecommunications subject to Indiana gross income tax, including the factor that the telecommunications must be charged to an Indiana address. Since the charges in this case are not charged to an Indiana address, the services are not subject to Indiana gross income tax under [45 IAC 1.1-2-5\(f\)\(2\)](#).

**FINDING**

Taxpayer's protest is sustained.

**II. Tax Administration–Negligence Penalty**

The Department issued proposed assessments and the ten percent negligence penalty for the tax year in question. Taxpayer protests the imposition of penalty. The Department refers to [IC 6-8.1-10-2.1\(a\)](#), which states in relevant part:

If a person:

...

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

...

the person is subject to a penalty.

The Department refers to [45 IAC 15-11-2\(b\)](#), which 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.

[45 IAC 15-11-2](#)(c) provides in pertinent part:

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.

In this case, taxpayer did not incur a deficiency which the Department had determined was due to negligence under [45 IAC 15-11-2](#)(b), and so was subject to a penalty under [IC 6-8.1-10-2.1](#)(a). Taxpayer has affirmatively established that there was no failure to pay the deficiency, as required by [45 IAC 15-11-2](#)(c).

**FINDING**

Taxpayer's protest is sustained.

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