

**Letter of Findings Number: 05-0102P
Assessment of Penalty**

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ISSUE**I. Tax Administration – Penalty**

Authority: [IC 6-8.1-10-2.1](#)(d), [45 IAC 15-11-2](#)(b).

The taxpayer protests the imposition of penalties.

STATEMENT OF FACTS

Taxpayer was audited and assessed tax for underpayment of use tax. Taxpayer was additionally assessed penalty and interest. Taxpayer withdrew its protest and paid the use tax liability. Taxpayer maintained its protest over the assessed penalties.

I. Tax Administration – Penalty**DISCUSSION**

[IC 6-8.1-10-2.1](#)(a)(3) provides in part that "if a person. . . incurs, upon examination by the department, a deficiency that is due to negligence. . . the person is subject to a penalty." Negligence is defined "as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. . ." [45 IAC 15-11-2](#)(b). Negligence is "determined on a case-by-case basis according to the facts and circumstances of each taxpayer." *Id.*

The Department may waive the penalty upon a showing that the failure to pay the deficiency was due to reasonable cause and not due to willful neglect. [IC 6-8.1-10-2.1](#)(d). However, in order to establish reasonable cause, the taxpayer must demonstrate that the taxpayer "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed. . ." [45 IAC 15-11-2](#)(c).

After reviewing the file and the taxpayer's explanation for its underpayment of tax, the Department determines the circumstances do not support a finding of negligence, as described within the regulation and statute. The taxpayer's actions were a result of reasonable cause and not willful neglect.

FINDING

The Department sustains the taxpayer's penalty protest.

Posted: 08/23/2006 by Legislative Services Agency

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