

**Letter of Findings Number: 06-0202**  
**Penalty**  
**For the Period: 2004**

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**ISSUE**

**I. Tax Administration – Penalty**

**Authority:** [IC 6-8.1-5-1\(b\)](#); [45 IAC 15-5-3\(b\)](#); [45 IAC 15-11-2](#)

The taxpayer protests the proposed assessment of a penalty.

**STATEMENT OF FACTS**

The taxpayer is a clothing retailer that has retail stores in various Indiana cities. The taxpayer was audited, and as a result of the audit a penalty was assessed. The taxpayer sent the Department a letter stating that the taxpayer "respectfully requests abatement of penalty charges concerning the assessment on sales and use tax audit for the period ending 12/31/2004." More facts will be provided as needed below.

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**DISCUSSION**

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. [IC 6-8.1-5-1\(b\)](#) states in pertinent part:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer. . . ." [45 IAC 15-5-3\(b\)](#).

The taxpayer protests the imposition of a negligence penalty. The taxpayer states in its May 16, 2006, correspondence:

The Taxpayer makes timely and accurate sales and use tax payments to the State of Indiana of over \$5 million per year. Therefore, the Taxpayer submits that it has shown reasonable diligence in complying with the tax laws in terms of both timeliness and amount of payments, as evidenced by its compliance rate of over 99 percent.

And further, taxpayer states that its previous compliance record is "excellent."

[45 IAC 15-11-2\(b\)](#) 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\(c\)](#) is also of import, and states that the Department "shall waive the negligence penalty . . . if the taxpayer affirmatively establishes that the failure . . . was due to reasonable cause and not due to negligence."

[45 IAC 15-11-2\(c\)](#) notes:

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. . . .

The taxpayer asserts, in a conclusory manner, that it "has shown reasonable diligence," but the taxpayer has not met its burden of proof.

**FINDING**

The taxpayer's penalty protest is denied.

*Posted: 09/20/2006 by Legislative Services Agency*

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