

**Letter of Findings Number: 06-0170P  
Penalty  
For the Period: 2003 and 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 assessment of a penalty.

**STATEMENT OF FACTS**

The taxpayer is a doctors' offices management company. The taxpayer was audited and as part of the audit a penalty was assessed. The taxpayer protested the proposed penalty assessment. The Department scheduled an administrative hearing for the taxpayer, but the taxpayer decided to forgo the hearing. This Letter of Finding is written pursuant to the information provided in the file. More facts will be provided below.

**I. Tax Administration – Penalty**

**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 correspondence:

We agree with the determination of the Indiana Department of Revenue that we owe use tax for the years ended December 31, 2003 and December 31, 2004 as a result of the Indiana Department of Revenue audit, but we respectfully request that the penalties . . . be abated due to reasonable cause.

And further,

Prior to the Indiana Department of Revenue audit, we were unaware of any outstanding use tax liabilities on the purchases discovered by the agent and we had assumed that all of the proper sales tax liabilities due to the state were collected at the time of purchase. We also assumed that where no sales tax was collected that there was an exemption that applied to that particular product in the medical services field.

Taxpayer notes that, "[W]e have put into place strict procedures to ensure that any future purchases that have a use tax liability will be paid timely to the state on a going-forward basis."

[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 proposed negligence penalty is assessed for the taxpayer's negligence during the audit period (i.e., 2003 and 2004). The taxpayer notes that it has subsequently taken steps "to immediately correct" the problems that were found in the audit, but attempts by the taxpayer to correct its problems for future years has no relation to whether or not the taxpayer was negligent for the years at issue—2003 and 2004. As noted at the outset, the taxpayer bears the burden of proof, and has not met it.

**FINDING**

The taxpayer's penalty protest is denied.

