

## DEPARTMENT OF STATE REVENUE

02-20060249P.LOF

Letter of Findings Number: 06-0249P  
Income Tax  
For Tax Years 2003-2005

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**ISSUE****I. 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 is also an Indiana registered retail merchant. As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments for base tax, penalties, and interest for the tax years 2003 through 2005. Taxpayer paid the entire amount of the assessments, but protests the imposition of penalties. Further facts will be supplied as required.

**I. Tax Administration–Negligence Penalty****DISCUSSION**

The Department issued proposed assessments and the ten percent negligence penalty for the tax years in question. Taxpayer protests the imposition of penalty and states that the only reason it did not pay the base taxes in the first place was that it was unaware that it was liable for those taxes. 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 reach 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 incurred a deficiency which the Department 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\(a\)](#). As required by [45 IAC 15-11-2\(c\)](#), taxpayer has not established that its failure to pay the deficiency was due to reasonable cause and not due to negligence.

**FINDING**

Taxpayer's protest is denied.

Posted: 11/29/2006 by Legislative Services Agency

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