

DEPARTMENT OF STATE REVENUE

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Letter of Findings Number: 06-0204P
Use Tax
For Tax Years 2003-04

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ISSUE**I. Tax Administration – Penalty**

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#); [45 IAC 15-3-2](#)(e).

The taxpayer protests the Department's imposition of the negligence penalty.

STATEMENT OF FACTS

Taxpayer's primary business activity is molding of plastic parts. Taxpayer sells the parts as component parts to other manufacturers for assembly onto finished products. The Indiana Department of Revenue ("Department") audited the taxpayer and issued a proposed assessment for use tax and penalty. The taxpayer paid the use tax liability and maintained its protest over the assessed penalties.

I. Tax Administration – Penalty**DISCUSSION**

The taxpayer protests the imposition of the negligence penalty for the tax years in question. The taxpayer claims the field auditor informed the taxpayer that no tax was due the Department. Therefore, the taxpayer argues the Department should waive the negligence penalty on the use tax assessment.

Under IC § 6-8.1-10-2.1(a)(3), "[I]f a person... incurs, upon examination by the [D]epartment, 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 the underpayment of use tax, the taxpayer did not establish that the underpayment of use tax was due to reasonable cause and not due to negligence, as described within the regulation and statute. Moreover, [45 IAC 15-3-2](#)(e) provides in part that "oral opinions or advice [of Department employees] will not be binding on the [D]epartment." Thus, the taxpayer's reliance on the auditor statements is not enough to avoid the imposition of the negligence penalty.

FINDING

For the above reasons, the Department denies the taxpayer's penalty protest.

Posted: 01/24/2007 by Legislative Services Agency

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