

Letter of Findings Number: 05-0477
Use Tax-Penalty
For the Years 2002-2004

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ISSUE

I. Tax Administration–Penalty

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

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a company that operates a manufacturing facility in Indiana. In 2003, Taxpayer entered into discussions with the Department of Revenue ("Department") regarding its use tax liabilities and the appropriate method of computing those liabilities. Based on a joint audit, Taxpayer was assessed use tax and interest. In addition, Taxpayer was assessed a ten percent negligence penalty. Taxpayer protested the imposition of the penalty and payment application issues; however, the payment application issues have been resolved.

I. Tax Administration–Penalty

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty for the taxes that the Department has imposed.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code further provides:

(b) "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.

(c) 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. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

[45 IAC 15-11-2](#).

Taxpayer's overall compliance with Indiana tax laws with respect to its Indiana operations—as demonstrated by Taxpayer's and the Department's audit—demonstrated that Taxpayer acted with ordinary business care with respect to its responsibilities under Indiana law.

FINDING

Taxpayer's protest is sustained.

Posted: 02/28/2007 by Legislative Services Agency

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