

DEPARTMENT OF STATE REVENUE

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0420060381.LOF**Letter of Findings: 06-0407; 06-0396; 06-0381
Gross Retail Sales Tax
For the Years 2003 through 2005**

NOTICE: Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES**I. Credit For Taxes Paid – Gross Retail Tax.**

Authority: IC § 6-2.5-3-5; [45 IAC 2.2-3-16](#)

Taxpayer argues that the Department of Revenue erred when it declined to permit taxpayer certain credits against an assessment of use tax.

II. Ten Percent Negligence Penalty.

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

Taxpayer requests that the Department exercise its discretion to abate the ten percent negligence penalty.

STATEMENT OF FACTS

The Department conducted an audit review of three local telephone companies. The three telephone companies are wholly owned subsidiaries of a single entity which – for simplicities sake – will be referred to hereafter as "taxpayer." The three audit reports resulted in the assessment of additional gross retail (use) tax. Taxpayer disagreed with the additional assessments and submitted a protest to that effect. An administrative hearing was held on during which taxpayers representatives explained the basis for the protest. This Letter of Findings results.

I. Credit For Taxes Paid – Gross Retail Tax.**DISCUSSION**

The audit report indicated that taxpayer was being denied a credit for sales tax paid to the vendor. The audit report did so on the ground that the vendor was "not registered to collect or remit Indiana sales and... no credit can be given."

Taxpayer has submitted copies of four invoices paid by telephone company one. Each of the four invoices indicates that the Ohio vendor charged six percent sales tax.

Taxpayer has submitted copies of four invoices paid by telephone company two. Each of the four invoices indicates that the Missouri vendor charged six percent sales tax.

Taxpayer has submitted copies of two invoices paid by telephone company three. Each of the two invoices indicates that the Ohio vendor charged six percent sales tax.

Taxpayer believes that it is entitled to a credit for the amount of sales tax it paid to the Ohio and Missouri vendors.

At the outset, should be noted that bears the burden of establishing that the audit report erred in its conclusion. [IC 6-8.1-5-1\(b\)](#) states that, "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

In determining a use tax liability, a taxpayer is entitled to credit for sales tax paid to Indiana or another taxing jurisdiction. IC § 6-2.5-3-5 states as follows:

A person is entitled to a credit against the use tax imposed on the use, storage, or consumption of a particular item of tangible personal property equal to the amount, if any, of sales tax, purchase tax, or use tax paid to another state, territory, or possession or the United States for the acquisition of that property.

The Department erred when it denied taxpayer credit for sales tax paid to the Ohio and Missouri vendors. IC § 6-2.5-3-5 allows a use tax credit regardless of whether or not the sales tax was paid to a state other than Indiana. See also [45 IAC 2.2-3-16](#). Taxpayer has met its burden of demonstrating that it is entitled to a credit for sales paid to the Missouri and Ohio vendors. The audit division is requested to review the ten invoices and to make the appropriate adjustments.

FINDING

Taxpayer's protest is sustained.

II. Ten Percent Negligence Penalty.**DISCUSSION**

Taxpayer requests that the department exercise its discretion to abate the ten percent negligence penalty imposed at the time of the original audit.

IC § 6-8.1-10-2.1 requires that a ten percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such

reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that 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 IC § 6-8.1-5-1(b), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." The assessment – including the negligence penalty – is presumptively valid. Taxpayer has failed to demonstrate that its failure to accrue additional use tax was attributable "to reasonable cause and not due to willful neglect."

FINDING

Taxpayer's protest is respectfully denied.

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