

DEPARTMENT OF STATE REVENUE

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Letter of Findings Number: 06-0439P
Sales Tax
For the Calendar Years 2002, 2003, and 2004

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ISSUE**I. Tax Administration – Penalty**

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

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on an audit conducted for the calendar years 2002, 2003, and 2004. The taxpayer is an Indiana resident.

I. Tax Administration – Penalty**DISCUSSION**

The taxpayer requests the penalty be abated as the taxpayer's error was small and the taxpayer did not commit willful negligence.

The taxpayer calculates the error rate as the use tax assessment per the audit divided by total purchases for the taxpayer which comes to less than 5 percent. The Department calculates the error rate as the use tax assessment per the audit divided by the total use tax liability for the taxpayer and for the audit period. Using the Department's method, the error rate is 36 percent which the Department considers material.

The taxpayer is being assessed the negligence penalty on the ground that taxpayer was inattentive of its duties. The regulation which controls the application of the inattention penalty is [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 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.

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

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