

Letter of Findings Number: 07-0046P
Sales Tax
For the Calendar Years 2003, 2004, and 2005

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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 a sales and use tax audit conducted for the years 2003, 2004, and 2005. The taxpayer is an Indiana taxpayer.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as most of the tax due in the audit was the result of a "direct pay" customer not remitting the tax to the State of Indiana.

The Department points out that the taxpayer is obliged by the Indiana tax regulations to obtain a "direct pay" certificate when dealing with a "direct pay" customer in order to be relieved of the duty of collecting sales tax from the "direct pay" customer. In the instant case, the taxpayer failed to obtain a direct pay certificate. As such, the taxpayer is inattentive to tax duties on this issue.

Of further note, the Department noted a 59% error rate in use tax payment for the audit period. This is a material error. This is an error that would constitute the assessment of the negligence penalty.

The regulation which defines inattention 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 did not act with reasonable care as the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the taxpayer's penalty protest is denied.

FINDING

The taxpayer's penalty protest is denied.

Posted: 05/23/2007 by Legislative Services Agency

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