

**Letter of Findings Number: 07-0135P**  
**Sales and Use 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 gross retail ("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 for the sales and use tax due in the audit.

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(d). Further, the Indiana Administrative Code, [45 IAC 15-11-2\(b\)](#) 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.

First, taxpayer requests that the penalty be abated for the sales tax due as a result of a "direct pay" customer not remitting the tax to the State of Indiana. The taxpayer claims to have not understood the direct pay permit that it received from its customer and believed that it was securing "a tax exemption certificate."

The Department points out that the taxpayer is obliged by the Indiana tax regulations to supply a breakdown of the costs of materials when it receives a "direct pay" certificate from a "direct pay" customer. If the taxpayer fails to provide a "material breakdown" when a "direct pay" certificate is received, then the taxpayer is liable for use tax. In the instant case, the taxpayer failed to supply a "material breakdown" to the "direct pay" customer. Thus, the taxpayer is inattentive to tax duties on this issue.

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. Accordingly, the taxpayer has not provided sufficient grounds in its protest to justify the Department's waiver of penalty.

Second, taxpayer requests that the penalty be abated for the use tax due for purchasing various tool, job, and office supplies without paying sales tax at the time of purchase. The taxpayer claims that it was ill-advised by a professional and believed the purchases were exempt as manufacturing costs.

The Department points out that the taxpayer is obliged by the Indiana tax regulations to pay use tax on purchases when no sales tax is paid at the time of purchase. When a contractor uses a purchase that does not become part of the improvement to the real estate, use tax is due on that purchase if no sales tax was paid at the time of purchase. In the instant case, the taxpayer did not pay sales tax at the time of purchase and failed to pay use tax. As such, the taxpayer is inattentive to tax duties on this issue.

The Department finds the taxpayer did not act with reasonable care as the taxpayer was inattentive to tax duties. As discussed previously, inattention is negligence and negligence is subject to penalty. Therefore, the taxpayer has not provided sufficient grounds in its protest to justify the Department's waiver of penalty.

**FINDING**

The taxpayer's penalty protest is denied.

*Posted: 08/22/2007 by Legislative Services Agency*  
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