

DEPARTMENT OF STATE REVENUE

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Letter of Findings Number: 07-0023
Sales and Use Tax
For the Calendar Years 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 a sales and use tax audit for the calendar years 2003 and 2004. The taxpayer is an international corporation with a plant in Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the taxpayer has a self-assessing use tax system where the taxpayer has paid over \$100,000 in use tax per year to the State of Indiana.

The Department points out the taxpayer has a 38% error rate in the payment of use tax. The taxpayer had a liability in the sales and use tax audit of about \$120,000. The Department feels this is an error that is a negative factor in the abatement decision regarding the penalty protest.

The regulation which references the penalty factors 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 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.

CONCLUSION

The penalty protest is denied as the taxpayer had a 38% error rate in use tax collection, and, the audit assessment of \$120,000 is material.

Posted: 04/30/2008 by Legislative Services Agency

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