

**Letter of Findings Number: 08-0050P**  
**Sales and Use Tax**  
**For the Tax Years 2003-2005**

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**ISSUES**

**I. Tax Administration–Negligence Penalty.**

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

Taxpayer protests the imposition of the ten percent negligence penalty.

**II. Tax Administration–Interest.**

**Authority:** IC § 6-8.1-10-1.

Taxpayer protests the imposition of interest.

**STATEMENT OF FACTS**

The Indiana Department of Revenue (Department) issued proposed assessments for gross retail ("sales") tax, interest, and ten percent negligence penalties for the 2003, 2004, and 2005 tax years. Taxpayer requests abatement of the interest and the ten percent negligence penalties. Taxpayer is an Indiana taxpayer.

**I. Tax Administration–Negligence Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of the penalties. The Department refers to IC § 6-8.1-10-2.1(a)(3), which provides "if a person... incurs, upon examination by the department, a deficiency that is due to negligence... the person is subject to a penalty."

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:

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 may waive the negligence penalty as provided in [45 IAC 15-11-2](#)(c), as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. 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 this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has provided sufficient information to establish that its failure to pay the deficiency was not due to Taxpayer's negligence, but was due to reasonable cause as required by [45 IAC 15-11-2](#)(c).

**FINDING**

The taxpayer's penalty protest is sustained.

**II. Tax Administration–Interest.**

**DISCUSSION**

The Department assessed interest on the tax liabilities. Taxpayer protests this imposition of interest for the time period between when Taxpayer submitted the information to the Department and the time the supplemental audit was started. The Department refers to IC § 6-8.1-10-1(a) which provides, as follows:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

Moreover, pursuant to IC § 6-8.1-10-1(e), the Department does not have the authority to waive the interest.

**FINDING**

Taxpayer's protest to the imposition of interest is respectfully denied.

**CONCLUSION**

In summary, Taxpayer's protest to the imposition of penalty is sustained, and Taxpayer's protest to the imposition of interest is respectfully denied.

*Posted: 05/28/2008 by Legislative Services Agency*

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