

Letter of Findings Number: 07-0604
Sales and Use Tax
For the Tax Year 2004

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ISSUES

I. Sales and Use Tax—Imposition.

Authority: IC § 6-2.5-1-1 et seq.; IC § 6-2.5-3-4; IC § 6-2.5-4-10; IC § 6-8.1-5-1; [45 IAC 2.2-3-8](#).

Taxpayer protests the imposition of use tax on its "purchase" of a Quonset building.

II. Tax Administration—Ten Percent Negligence Penalty.

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

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana farmer. The Department assessed use tax on Taxpayer's December 1, 2004, "purchase" of a Quonset building to be constructed on its property without paying sales tax. However, Taxpayer's situation actually involves three transactions. The first transaction occurred when Taxpayer purchased the materials and constructed a Quonset building converting them to realty. The second transaction occurred on November 24, 2004, when Taxpayer invoiced a "sale" of the Quonset building, which remained on Taxpayer's property, to a third party. The third transaction occurred on December 1, 2004, when Taxpayer entered into a "lease" agreement to rent the Quonset building from the third party for a period of seven years.

On initial review, the Department found that on December 1, 2004, Taxpayer had "purchased" a Quonset building to be constructed on its property from a third party without paying sales tax, and assessed use tax. During the course of the protest and upon further review, the Department determined that on December 1, 2004, Taxpayer had not purchased the Quonset building, but rather had entered into a "lease" agreement to rent the Quonset building from the third party. Since the December 1, 2004, transaction is the transaction at issue, the Letter of Findings will address the rental situation.

Taxpayer protested the assessment of use tax and penalty. An administrative hearing was held, and this Letter of Findings results.

I. Sales and Use Tax—Imposition.

DISCUSSION

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

Indiana imposes a sales tax on retail transactions and a complementary use tax on tangible personal property that is stored, used, or consumed in the state. IC § 6-2.5-1-1 et seq. An exemption from the use tax is granted for transactions where the gross retail tax ("sales tax") was paid at the time of purchase pursuant to IC § 6-2.5-3-4.

IC § 6-2.5-4-10(a) provides:

A person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases *tangible personal property* to another person other than for subrent or sublease. (*Emphasis Added*).

The Department also refers to [45 IAC 2.2-3-8\(a\)](#), which provides:

(a) In general, all sales of tangible personal property are taxable, and all sales of *real property* are not taxable. The conversion of tangible personal property into realty does not relieve the taxpayer from a liability for any owing and unpaid state gross retail tax or use tax with respect to such tangible personal property. (*Emphasis Added*).

Therefore, while Taxpayer's initial purchase of the materials to construct the Quonset Building converting them to realty are subject to sales and use tax as found in [45 IAC 2.2-3-8\(a\)](#), that initial transaction is not the transaction at issue in this protest. The December 1, 2004, transaction, resulting in Taxpayer's lease payments to the third party for use of the Quonset building, is the transaction at issue. Since the lease payments are for the rental of real property, the lease payments are not subject to sales and use tax under IC § 6-2.5-4-10(a).

FINDING

Taxpayer's protest is sustained.

II. Tax Administration - Ten Percent Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation [45 IAC 15-11-2\(b\)](#) clarifies the standard for the imposition of the negligence penalty as follows:

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 standard for waiving the negligence penalty is given at [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.

In this case, since Taxpayer has established that it does not owe the proposed assessments as discussed in Issue I, Taxpayer has affirmatively established that there was not a failure to pay deficiencies and accordingly that it exercised ordinary business care, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest to the imposition of the penalty is sustained.

CONCLUSION

In summary, Taxpayer's protest is sustained.

Posted: 07/02/2008 by Legislative Services Agency

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