

Letter of Findings: 07-06 33P
Sales and Use Tax
For the Years 2002, 2003, 2004, 2005

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ISSUE

I. Tax Administration – Imposition of Negligence Penalty.

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

Taxpayer protests the assessment of negligence penalty.

STATEMENT OF FACTS

Taxpayer is a commercial leasing company based outside Indiana. Its leases are solicited and generated through a related bank's branches throughout the United States. Capital leases, operating leases, and lease assignments are among the transactions executed by Taxpayer. Taxpayer is included in the combined financial income tax filings of the related bank and the bank's subsidiaries.

The Indiana Department of Revenue ("Department") conducted a sales tax audit of Taxpayer for the years 2002, 2003, 2004, and 2005. Taxpayer was assessed additional sales tax, interest and penalty through the audit. Taxpayer protested the assessment of penalty. Taxpayer was given the option of requesting a hearing on its protest. Taxpayer did not request a hearing, therefore, the determination made in this Letter of Findings is based on Taxpayer's written protest, dated November 9, 2007, and the Department's audit report. Additional facts will be provided as necessary.

I. Tax Administration – Imposition of Negligence Penalty.

DISCUSSION

Taxpayer protested 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.

Taxpayer has affirmatively established, as required by [45 IAC 15-11-2](#)(c), that its failure to pay sales tax on some of the transactions relating to their commercial leases was due to "reasonable cause" and not due to negligence.

FINDING

Taxpayer's protest is sustained.

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