

**Letter of Findings Number: 08-0099P  
Negligence Penalty  
For Tax Years 2004-2006**

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**ISSUE**

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

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

Taxpayer protests imposition of a ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer operates businesses in Indiana and many other states. As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments for base sales and use tax, penalties, and interest for the tax years 2004 through 2006. Taxpayer protests the imposition of ten percent negligence penalties for the years at issue. Further facts will be supplied as required.

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

**DISCUSSION**

The Department issued proposed assessments and the ten percent negligence penalty for the tax years in question. Taxpayer protests the imposition of penalty and states that the majority of the assessments for sales and use tax came from items which it had determined were not subject to tax, but which the Department determined were subject to tax via the audit. The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to [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.

*(Emphasis added.)*

[45 IAC 15-11-2\(c\)](#) provides in pertinent part:

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.

In this case, taxpayer incurred an assessment which the Department determined was due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to a penalty under IC § 6-8.1-10-2.1(a). As a result of this protest, Taxpayer provided additional documentation and analysis which support Taxpayer's position. While the Department was correct in its determination on the taxable status of the items in question, Taxpayer has given reasonable explanations for its tax treatment of those items. Taxpayer has established that its failure to pay sales and use taxes was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

**FINDING**

Taxpayer's protest is sustained.

*Posted: 08/27/2008 by Legislative Services Agency*

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