

**Letter of Findings Number: 08-0130P
Sales and Use Tax
For the Tax Years 2004-2006**

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ISSUE

I. Tax Administration—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 taxpayer. The Indiana Department of Revenue (Department) issued proposed assessments for gross retail ("sales") tax, interest, and ten percent negligence penalties for the 2004, 2005, and 2006 tax years. Taxpayer requests abatement of the penalties.

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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."

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 reach 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\(c\)](#), in pertinent part, 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.

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). Taxpayer has argued a variety of grounds for penalty waiver, including that Taxpayer operated a "large volume of business... [which gave] rise to some unintentional oversights," spent a "tremendous amount of time," was fully cooperative with the Department, and has implemented "new policies and procedures to... account for the oversights." Nonetheless, the Department finds that Taxpayer did not act with reasonable care as Taxpayer was inattentive to its tax duties. Inattention is negligence and negligence is subject to penalty. Accordingly, the taxpayer has not provided sufficient grounds in its protest to justify the Department's waiver of penalty.

FINDING

The taxpayer's penalty protest is denied.

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