

LETTER OF FINDINGS NUMBER: 08-0073
Sales and Use Tax
For the Tax Period 2005-2006

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ISSUE

I. Sales and Use Tax – Imposition.

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-3-2; IC § 6-2.5-9-3; IC § 2.5-4-1(e).

The Taxpayer protests the assessment of sales tax.

II. Tax Administration - Ten Percent Negligence Penalty.

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

The Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

The Taxpayer is a Michigan sole proprietorship that sells and services cash registers. It also sells cash register supplies such as labels, ribbons, and paper. Pursuant to an audit, the Indiana Department of Revenue (Department) assessed additional sales tax, interest, and penalty. The Taxpayer protested these assessments. A hearing was held and this Letter of Findings results.

I. Sales and Use Tax – Imposition.

DISCUSSION

All tax assessments are presumed to be valid. IC § 6-8.1-5-1(b). The Taxpayer bears the burden of proving that any assessment is incorrect.

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction in Indiana. The sales tax is collected by the seller as agent for the state. IC § 6-2.5-3-2. If the retail merchant fails to collect and remit sales taxes to the state, the retail merchant is, "liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state." IC § 6-2.5-9-3.

The Taxpayer sold equipment to customers in Indiana. The Taxpayer ordered the equipment from out-of-state manufacturers. Common carriers delivered the equipment to the Indiana customers. The Taxpayer invoiced the customer for the machinery without adding sales tax to the invoice. The Department imposed the uncollected sales tax on the Taxpayer who protested the assessments. The Taxpayer contended that the sales were exempt from the Indiana sales tax because they did not take place in Indiana.

Transfer is considered to have occurred after delivery of the property to the customer because Indiana is "destination state." IC § 6-2.5-4-1(e). The retail sale subject to the imposition of sales tax takes place when the title to the property transfers. Therefore, when the title to the property transferred in Indiana, the retail sale takes place in Indiana. Since the sales tax is imposed on retail sales in Indiana, the Taxpayer had the duty to collect sales tax on the sales.

The Taxpayer did not collect and remit the sales tax on the subject sales. The Department properly imposed the sales tax.

FINDING

The taxpayer's protest to the assessment of sales tax is respectfully denied.

II. Tax Administration - Ten Percent Negligence Penalty.

DISCUSSION

The 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.

The Taxpayer provided substantial documentation to indicate that its failure to pay the assessed sales tax was due to reasonable cause rather than negligence.

FINDING

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

CONCLUSION

The Taxpayer's protest to the imposition of sales tax is denied.

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

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