

Letter of Findings: 08-0308P
Gross Retail Tax Penalty
For the Years 2004, 2005, and 2006

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ISSUE

I. Ten-Percent Negligence Penalty – Gross Retail Tax.

Authority: IC § 6-2.5-1-1 et seq.; IC § 6-8.1-10-2.1(a)(3); IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer asks that the Department of Revenue exercise its discretion to abate the ten-percent negligence penalty imposed on the assessment of additional use tax.

STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of providing consumer loans, retail financing, and credit related products and services throughout the United States. While headquartered in Indiana, taxpayer has multiple branch offices in numerous other states. Although as a service provider, taxpayer was not required to collect and remit sales tax, the Indiana Department of Revenue (Department) conducted an audit review of taxpayer's potential use tax liability for 2004, 2005, and 2006. The audit found that taxpayer had "a system of remitting use tax on capital assets and office supplies removed from Supplies Inventory... and shipped from a Missouri warehouse into Indiana." Although the audit found that taxpayer had correctly paid use tax on items removed from inventory, the taxpayer had no system of remitting use tax on other expense invoices. After entering into an agreement with taxpayer to employ a sampling methodology, the audit found that taxpayer owed approximately \$224,000 in additional use tax. In addition, the audit concluded that assessment of a ten-percent negligence penalty was warranted. Taxpayer disagreed with the penalty and submitted a protest to that effect. A telephone hearing was conducted and this Letter of Findings results.

I. Ten-Percent Negligence Penalty – Gross Retail Tax.

DISCUSSION

In Indiana, a sales tax is imposed on retail transactions and a complementary use tax is imposed on tangible personal property that is stored, used, or consumed in the state. IC § 6-2.5-1-1 et seq. The Department found taxpayer had underpaid its use tax liability by approximately \$224,000. In addition, the Department found that the ten-percent negligence penalty was warranted.

Taxpayer argues that imposition of the negligence penalty is inappropriate and that the Department should exercise its authority to abate the penalty. Taxpayer states that it "files and pays [its] Indiana Sales and Use Tax Return in a timely manner" and that it attempts "to remit the proper tax when the return is filed...."

IC § 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence.

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case by case basis according to the facts and circumstances of each taxpayer." *Id.*

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that 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...."

Taxpayer is a large, sophisticated taxpayer which has been subject to multiple use tax audits in the past and was not unaware of its requirements under the law. During the period under audit, taxpayer states that it self-reported approximately \$220,000 in use tax. However, the audit found that taxpayer owed additional use tax of approximately \$224,000; this represents an amount of use tax attributable to over \$3,700,000 in purchases acquired and used in Indiana. Taxpayer's failure to self-assess use tax on this amount of purchases does not represent the "reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." [45 IAC 15-11-2\(b\)](#).

FINDING

Taxpayer's protest is respectfully denied.

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