

**Letter of Findings Number: 08-0354P**  
**Sales Tax**  
**For the Tax Period February 2008**

**NOTICE:** Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Tax Administration - Ten Percent Negligence Penalty.**

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

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

**STATEMENT OF FACTS**

The Taxpayer is an Indiana limited liability company. The Taxpayer filed its sales tax return for the tax period February 2008 late. The Indiana Department of Revenue (Department) assessed the negligence penalty and interest. The Taxpayer protested the assessment of penalty and submitted documentation supporting its protest.

**I. 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 Department notified the Taxpayer in 2007 that the Taxpayer had been placed on early filer status. The Taxpayer argued that it was still unfamiliar with the early filer schedule when it filed its February 2008 return one day late. The Taxpayer argued that the penalty should be waived due to its lack of familiarity with the new schedule. Also, the Taxpayer argued that the negligence penalty was inappropriate in this case because the Taxpayer had a good payment history since the current Controller was hired by the Taxpayer.

The Department disagrees with this analysis. The Taxpayer is a limited liability company. As such, it is responsible for the actions of each and every employee. As a limited liability company, the Taxpayer bears the burden of the company's past actions. The Taxpayer has a history of best information available assessments, no remit assessments, and calculation errors. The Taxpayer has also had several negligence penalties abated in the past. The facts and circumstances indicate that the Department properly imposed the negligence penalty in this situation.

**FINDING**

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

*Posted: 10/29/2008 by Legislative Services Agency*  
An [html](#) version of this document.