DEPARTMENT OF STATE REVENUE

04-20080419P.LOF

Letter of Findings Number: 08-0419P
Sales and Use Tax
For the Tax Period 2004-2006

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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 Indiana Department of Revenue audited the Taxpayer for the period 2004-2006. The audit resulted in an assessment of sales tax, use tax, interest, and penalty. The Taxpayer protested the imposition of the negligence penalty.

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.

    During the audit process, the Department learned that the Taxpayer made mistakes in several areas of its collection and remittance of sales tax. It did not collect sales tax on sales when it failed to collect an exemption certificate. The Taxpayer did not collect sales tax on taxable delivery charges. The Taxpayer calculated its bad debt deductions incorrectly. The Taxpayer took items from its inventory to use without self-assessing use tax. The Taxpayer taxed fuel inconsistently. The scope and breadth of these mistakes indicate that the Taxpayer did not exercise ordinary business care in its operations concerning sales and use tax. This constitutes negligence. The Department properly imposed the negligence penalty.

FINDING

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

Posted: 10/29/2008 by Legislative Services Agency
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