

**Letter of Findings Number: 08-0128P
Negligence Penalty
For Tax Years 2005-2006**

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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 this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration–Negligence Penalty.

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

Taxpayer protests imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer operates a restaurant in Indiana. As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments for use tax, penalties, and interest for the tax years 2005 through 2006. Taxpayer protests the imposition of ten percent negligence penalties for the years at issue. Further facts will be supplied as required.

I. Tax Administration–Negligence Penalty.

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty for the tax years in question. Taxpayer protests the imposition of penalty. Taxpayer also explains that the failure to pay sales tax on the items at the time of purchase was not due to willful neglect, but rather was due to differences between Indiana's tax laws and the tax laws of its home state. Taxpayer states that it is now paying sales tax according to the tax laws of Indiana.

The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) 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 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.

(Emphasis added.)

[45 IAC 15-11-2](#)(c) provides in pertinent part:

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). The fact that Taxpayer was unaware of Indiana's tax laws is not ordinary business care and prudence. Taxpayer has not established that its failure to pay sales and use taxes was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2](#)(c).

FINDING

Taxpayer's protest is denied.

Posted: 11/26/2008 by Legislative Services Agency

An [html](#) version of this document.