

**Letter of Findings Number: 08-0346P
Negligence Penalty
For Tax Years 2008**

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ISSUE

I. Tax Administration—Late Payment 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 business in Indiana. The Indiana Department of Revenue ("Department") did not receive Taxpayer's monthly sales tax payment in a timely manner for the tax period at issue and therefore issued a proposed assessment of a late filing negligence penalty. Taxpayer protests the imposition of ten percent negligence penalty. Further facts will be supplied as required.

I. Tax Administration—Late Payment Penalty.

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty for the tax period in question. Taxpayer protests the imposition of penalty. Taxpayer also explains that the failure to timely pay sales tax on the items was not due to willful neglect, but rather was due to the abrupt departure of an accounting employee. Taxpayer states that there were difficulties in accessing its records of which the departed employee had been in charge. Taxpayer paid its sales tax at the end of the month and was unaware that it was subject to an early filer requirement. Taxpayer states that it has already paid the underlying tax in question and does not have a history of paying late.

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

If a person:

...

(2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;

...

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's employee departed abruptly does not relieve Taxpayer of the duty to timely remit sales tax. Also, a review of the Department's records shows that Taxpayer has had twenty-five late payments in the last seven years. This does not support Taxpayer's assertion that it does not have a history of paying late. Taxpayer has not established that its failure to pay sales taxes in a timely manner 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.

