

Letter of Findings Number: 08-0411P
Prepaid Sales Tax
For the Tax Year 2007

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ISSUE

I. Tax Administration—Penalty.

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

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana taxpayer. Taxpayer was assessed a negligence penalty for the late payment of prepaid sales tax for the period ending October 15, 2007. Taxpayer requests abatement of the penalty.

I. Tax Administration—Penalty.

DISCUSSION

Taxpayer protests the imposition of a penalty for late payment of prepaid sales tax.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

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 Department may waive the negligence penalty as provided in [45 IAC 15-11-2\(c\)](#), in pertinent part, 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.

Taxpayer has argued for a penalty waiver asserting a history of timely tax payments and maintaining that the October late payment resulted from the unintentional mistake made because certain personnel were absent. However, a review of Taxpayer's payment history and compliance record shows that within the last eight years Taxpayer has untimely paid the prepaid sales tax that was due sixteen times. In fact, Taxpayer had eight other untimely payments in the 2007 tax year alone. While Taxpayer has argued that this late payment was unintentional, the Department finds that Taxpayer did not act with reasonable care and was inattentive to its tax duties. Inattention is negligence and negligence is subject to penalty. Accordingly, Taxpayer has not provided sufficient grounds in its protest to justify the Department's waiver of penalty.

FINDING

Taxpayer's penalty protest is denied.

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