

Letter of Findings: 08-0422P
Gross Retail Tax Penalty
For the Year 2007

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ISSUE

I. Late Payment Penalty – Gross Retail Tax.

Authority: IC § 6-8.1-10-2.1(a), (b); IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(c\)](#).

Taxpayer challenges the Department of Revenue's decision imposing a ten-percent "late payment" penalty.

STATEMENT OF FACTS

Taxpayer is a retail merchant doing business in locations in Indiana and outside Indiana. Taxpayer filed a Department of Revenue (Department) form ST-103 reporting retail sales for the quarter ending December 31, 2007. The form was purportedly filed late, and the Department imposed a ten-percent penalty. Taxpayer protested, the matter was assigned to the Hearing Officer, and an administrative hearing was scheduled for September 22, 2008. Taxpayer declined the opportunity to take part in the hearing. Therefore, this Letter of Findings was prepared based upon the information contained with the protest file.

I. Late Payment Penalty – Gross Retail Tax.

DISCUSSION

Taxpayer challenges the imposition of the ten-percent penalty imposed pursuant to IC § 6-8.1-10-2.1(a), (b). Under that statute, if a tax payment is not paid by the due date for that payment, a penalty is assessed at ten percent of the tax amount due. However, "If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty." IC § 6-8.1-10-2.1(d). (Emphasis added) The standard for waiving the penalty is found at [45 IAC 15-11-2\(c\)](#) which reads in 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.... Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular circumstances of each case.

Taxpayer argues that the ST-103 form contains a due date of "Jan 31, 2008" which it followed in submitting the return. However, the form supplied by taxpayer was not prepared by the Department but was apparently prepared either by taxpayer or by an unknown third-party vendor. Both taxpayer and the Department agree that the "Jan 31, 2008" notation is incorrect. The preprinted form supplied to taxpayer by the Department contained the correct due date of "Jan 22 2008."

Taxpayer requests that the Department exercise its discretion to abate the penalty on the ground that it made an honest mistake and that it had no willful intent to disregard its filing obligations. However, in determining whether taxpayer has exercised "ordinary business care," it is relevant to note that taxpayer was assessed similar late penalties during 2001, 2002, 2004, and 2007.

Given the totality of the circumstances, the Department is unable to agree with taxpayer's assertion that it exercised "ordinary business care and prudence" and that the Department is statutorily obliged to waive the penalty.

FINDING

Taxpayer's protest is respectfully denied.

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