

**Letter of Findings Number: 08-0473P
Negligence Penalty
For the Years 2004 and 2005**

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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 § 6-8.1-5-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten-percent negligence penalty.

STATEMENT OF FACTS

After an audit for the years 2004 and 2005, Taxpayer was assessed additional sales and use tax, interest and negligence penalty. Taxpayer paid the base assessment and interest, but protested the penalty. Taxpayer was given the opportunity to request a hearing on its protest, but Taxpayer declined the hearing. This Letter of Findings is based on information in Taxpayer's file. Additional information will be provided if required.

I. Tax Administration– Negligence Penalty.

DISCUSSION

Taxpayer argues that it correctly accounted for the tax due the Department on the overwhelming majority of their transactions. Taxpayer further stated that a significant portion of the additional assessment through the audit was due to procedures in one of the two years at issue. Taxpayer also noted that the additional assessment resulted because Taxpayer was operating under the assumption that it was a manufacturer and not a service provider as the Department found, therefore several transactions it thought were exempt, were not. Taxpayer argues that its failure to remit the appropriate tax was "not a display of willful neglect or intentional disregard of Indiana sales/use tax rules and regulations."

The Department refers to IC § 6-8.1-10-2.1(a)(3), which provides, "if a person... 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.

The Department may waive the negligence penalty as provided in [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.

In this case, Taxpayer incurred a deficiency which the Department determined was due to negligence under [45 IAC 15-11-2\(b\)](#), and was subject to a penalty under IC § 6-8.1-10-2.1(a). Under IC § 6-8.1-5-1(b), "the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Taxpayer did not have a use tax system in place during the years at issue. Taxpayer's error rate was one-hundred percent. Taxpayer's misunderstanding that it was a manufacturer and not a service provider does not demonstrate reasonable cause sufficient to waive the negligence penalty.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 11/26/2008 by Legislative Services Agency
An [html](#) version of this document.