

**Letter of Findings Number: 08-0528P  
Negligence Penalty  
For the Year 2008**

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**ISSUE**

**I. Tax Administration – Negligence Penalty.**

**Authority:** IC § 6-2.5-2-1; 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 sold its product to a customer and did not collect sales tax on the transaction at the time the transaction took place. Taxpayer reported its sales to the Indiana Department of Revenue ("Department"), but did not remit sales tax on the transaction. Subsequently, Taxpayer's customer paid the sales tax at which time Taxpayer remitted the tax to the Department.

Taxpayer was assessed a penalty for late payment of sales tax. Taxpayer protested the penalty. Taxpayer was afforded the opportunity to have a hearing on its protest, but did not so avail itself. This Letter of Findings is based on the information in Taxpayer's file. Additional facts will be provided as necessary.

**I. Tax Administration – Negligence Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of a penalty for late payment of 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:

(b) "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.

(c) 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.

Taxpayer argues that its customer initially indicated it would pay the sales tax, but failed to do so at the time. Under IC § 6-2.5-2-1, Taxpayer, however, had an obligation to collect sales tax from its customer on behalf of the state of Indiana unless its customer presented Taxpayer with a valid exemption certificate. While Taxpayer eventually collected the sales tax from its customer and remitted the tax to the Department, it did not either collect the sales tax at the time of the transaction was completed, nor did it properly request an exemption certificate from its customer.

Taxpayer has not shown reasonable cause sufficient to overcome the standard of negligence that imposes the penalty.

**FINDING**

Taxpayer's protest is respectfully denied.

*Posted: 12/17/2008 by Legislative Services Agency*  
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