

**Letter of Findings Number: 08-0485
Negligence Penalty and Interest
For the Years 2005 and 2006**

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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 and Interest.

Authority: IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer rents, sells and services heavy construction equipment from their sole Indiana location. Taxpayer's customers are primarily in the southern Indiana and Louisville area.

As the result of a sales and use tax audit for the years 2005 and 2006, the Indiana Department of Revenue ("Department") issued Taxpayer proposed assessments, ten percent negligence penalty and interest. Taxpayer paid the base tax assessment, but protests the imposition of penalty and interest. Further facts will be provided as necessary.

I. Tax Administration – Negligence Penalty and Interest.

DISCUSSION

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.

The majority of taxes assessed against Taxpayer resulted from a misapplication of Kentucky sales tax on the initial transaction in Indiana of interstate rentals of equipment rather than Indiana sales tax. Taxpayer has shown that its underpayment of taxes was due to reasonable cause and not willful neglect.

Under IC § 6-8.1-10-1(e), the Department may not waive interest.

FINDING

Taxpayer's protest of the negligence penalty is sustained. Taxpayer's protest of the imposition of interest is denied.

Posted: 01/28/2009 by Legislative Services Agency

An [html](#) version of this document.