

**Letter of Findings Number: 08-0643P
Negligence Penalty
For the Years 2007 and 2008**

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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—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 was assessed penalty for late payment of sales tax. Taxpayer protested the assessment of penalty. Taxpayer was offered the opportunity to request a hearing on its protest. Taxpayer did not request a hearing and therefore the determination in this Letter of Findings is based on information available in Taxpayer's protest file. Additional facts will be presented when necessary.

I. Tax Administration—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 the late payments were the result of fraudulent acts of its accountant. Taxpayer states that it has a record of payments that it made to its accountant so that the latter would forward payment on Taxpayer's behalf to appropriate agencies. Taxpayer states that its accountant did not do so. Taxpayer states that it has been working with the Department to pay its liabilities, but requests that the penalty be waived. Apart from its say so, Taxpayer does not substantiate its protest with relevant documentation. Taxpayer has not demonstrated that its late payments of sales tax were due to reasonable cause and therefore not subject to the negligence penalty.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 03/25/2009 by Legislative Services Agency
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