

**Letter of Findings Number: 08-0650P**  
**Riverboat Wagering Tax-Penalty**  
**For the Period July 29, 2008**

**NOTICE:** 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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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 operates a gaming facility in Indiana. Taxpayer was one day late in remitting Riverboat Wagering and Admissions taxes for a previous day. The Department assessed penalty and interest with respect to the late payment. Taxpayer protested only the penalty.

**I. Tax Administration—Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to timely remit Riverboat Wagering and Admissions taxes for one particular day.

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 indicated that the failure to remit Riverboat Wagering Tax was due to an unusual series of technological problems with its machines and the fact that the Indiana Gaming Commission had to change its tax forms to handle Taxpayer's gaming arrangements. Taxpayer indicated that it was unable to submit the revised tax form until 8:10 p.m., after the cutoff for payments for the due date of the payment. Taxpayer made the required payment the next day. Based on the unusual circumstances relating to Taxpayer and Taxpayer's immediate recognition and resolution of the late payment, Taxpayer has provided sufficient documentation to justify penalty waiver.

**FINDING**

Taxpayer's protest is sustained.

*Posted: 04/29/2009 by Legislative Services Agency*  
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