

## DEPARTMENT OF STATE REVENUE

04-20080466P.LOF

Letter of Findings Number: 08-0466P  
Use Tax  
For the Tax Years 2004-2006

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**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 is an Indiana taxpayer. After an audit, the Indiana Department of Revenue (Department) issued proposed assessments for use tax, interest, and ten percent negligence penalties for the 2004, 2005, and 2006 tax years. The Department found that Taxpayer had made a variety of purchases on which the Indiana sales tax was not paid at the time of purchase nor was use tax remitted to the Department. Taxpayer requests abatement of the penalty on the use tax assessment.

**I. Tax Administration—Penalty.****DISCUSSION**

Taxpayer protests the imposition of the penalty on the use tax assessment. 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\(c\)](#), in pertinent part, 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.

In this case, Taxpayer incurred an assessment which the Department determined was due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to a penalty under IC § 6-8.1-10-2.1(a). While Taxpayer has argued for a penalty waiver asserting a variety of objections including a rapid expansion leading to a greater number of purchases and its current use of an improved computerized accrual system, Taxpayer has not demonstrated reasonable cause. Taxpayer's efforts to institute a better accrual system for the post audit years are commendable; however, the equitable nature of its argument does not overcome the standard of negligence during the audit years that results in the penalty. Moreover, the Department finds that Taxpayer was inattentive to its tax duties. Inattention constitutes negligence and negligence is subject to penalty. Furthermore, Taxpayer failed to remit use tax on items that the Department had previously assessed tax in prior audits including items on which Taxpayer's previous protests have been denied by the Department. Accordingly, Taxpayer has not provided sufficient grounds to justify the Department's waiver of penalty.

**FINDING**

The taxpayer's penalty protest is denied.

*Posted: 05/27/2009 by Legislative Services Agency*

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