

**Letter of Findings Number: 08-0578P
Sales and Use Tax
For Tax Years 2002-05**

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ISSUE

I. Tax Administration—Negligence Penalty.

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

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a business operating in Indiana. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer owed sales tax and use tax for the years 2002, 2003, 2004 and 2005. The Department issued proposed assessments for sales tax, use tax, interest, and penalties for those years. Taxpayer paid all of the proposed assessments except for the amount relating to penalty. Taxpayer protests that it has made every effort to comply with Indiana sales and use tax requirements and has an exceptional track record in working with the State in resolving any misunderstandings.

The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;

...

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.

(Emphasis added.)

[45 IAC 15-11-2\(c\)](#) provides in pertinent part:

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). A review of the audit report shows that Taxpayer paid approximately forty-five percent of the sales and use taxes due for these tax years. This does not meet the requirement that Taxpayer demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out its duty to pay the full amount of tax due. Taxpayer has not established that its failure to pay the full amount of taxes in question was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest is denied.

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