

Letter of Findings Number: 09-0036P
Sales Tax
For Tax Period Ending September 30, 2008

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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 an Indiana business. Taxpayer protests the imposition of the ten percent negligence penalty on its sales tax payment for September, 2008. Taxpayer failed to timely remit sales taxes for that period. The Indiana Department of Revenue ("Department") issued a proposed assessment for ten percent negligence penalty on that untimely payment. Taxpayer protests the proposed assessment but did not request a hearing. The Letter of Findings was written based on the materials in the file. Further facts will be supplied as required.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of ten percent negligence penalty on a late payment it made for its sales tax remittance for September, 2008. Taxpayer states that it tried to file its September sales taxes but erroneously filed the September payment for October. Taxpayer appealed the imposition to the Department's initial-level review, which denied the protest. The Department provided an explanation for the denial, referring to IC § 6-8.1-10-2.1(a) in support of its determination. The Department explained that, in order for the Department to waive the penalty, taxpayers must show that the failure to remit taxes in a timely manner was due to reasonable cause and not due to willful neglect. Taxpayer took exception to the Department's explanation and insists that it was not willfully negligent.

The relevant statute is IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department also 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.)

Also, [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 did not follow the directions provided by the Department, which is treated as negligence under [45 IAC 15-11-2\(b\)](#). The Department cannot agree with Taxpayer that this was ordinary business care. Therefore, this was not reasonable cause, as provided by [45 IAC 15-11-2\(c\)](#). The Department's previous reference to willful neglect, and Taxpayer's subsequent reaction to the use of that term, is not relevant. Taxpayer failed to exercise ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed by [45 IAC 15-11-2\(c\)](#). This is treated as negligence by [45 IAC 15-11-2\(b\)](#). Therefore, penalty was properly imposed under IC § 6-8.1-10-2.1.

FINDING

Taxpayer's protest is denied.

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