

**Letter of Findings Number: 09-0294P**  
**Sales Tax**  
**For Tax Years 2005-08**

**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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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–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 out-of-state corporation. Taxpayer protests the imposition of the ten percent negligence penalty on sales tax payments from March of 2005 to June of 2008. Taxpayer failed to timely remit sales taxes thirty-seven times in that period. The Indiana Department of Revenue ("Department") issued proposed assessments for ten percent negligence penalty on those untimely payments. Taxpayer protests the proposed assessments 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 penalties on late payments it made on its sales tax remittances from March, 2005 through June 2008. Taxpayer states that it was in a period of rapid growth and did not have the resources or employees necessary to ensure compliance with the various states' filing requirements. Taxpayer points out that it has since replaced the employee responsible for filing sales taxes with Indiana and that the new employee answers to the COO of the corporation. Taxpayer believes that these circumstances are sufficient to warrant waiver of penalty.

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 did not have adequate employee knowledge or supervision of its employees to ensure timely payment of Indiana sales tax. Taxpayer was late on thirty-seven sales tax payments in thirty-eight months. The Department cannot agree with Taxpayer that this was ordinary business care and therefore Taxpayer's actions do not constitute reasonable cause, as provided by [45 IAC 15-11-2\(c\)](#). Ignorance of the listed tax laws and regulation and failure to follow instructions provided by the Department are treated as negligence, as provided 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.

