

**Letter of Findings Number: 09-0187P  
Sales and Use Tax – Negligence Penalty  
For the Periods 2002-2007**

**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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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 the ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is a company doing business in Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer for sales and use tax for the years 2002 to 2007. As a result of the Department's audit, the Department issued proposed assessments of sales and use tax, interest, and penalties. Taxpayer protested only the penalty.

The Department sent a letter to Taxpayer stating that Taxpayer could request a hearing by replying to the letter within twenty (20) days of the date of the letter. Taxpayer did not reply to the Department's letter. Due to Taxpayer's failure to reply, this Letter of Findings is written based on the information in Taxpayer's protest file and other Department records relating to Taxpayer.

**I. Tax Administration–Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of the ten percent negligence penalty on the sales and use tax imposed as a result of the Department's audit.

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 has asserted that the penalty should be abated based on the "volume and frequency of the transactions and the total capital investment during the audit period." However, with regard to the sales tax portion of the assessment, the errors resulted from two items. The first item was what the audit termed were "tax flags." "Tax flags" indicated sales that Taxpayer had previously determined were exempt but which the Department determined were taxable in a prior audit. The second item was a calculation adjustment.

With regard to the use tax portion of the assessment, Taxpayer underreported its use tax by over ten percent despite prior Department audits. Based on the nature of Taxpayer's sales and use tax deficiencies and Taxpayer's prior audit history, the Department cannot conclude that Taxpayer acted with reasonable cause sufficient to justify penalty waiver.

**FINDING**

Taxpayer's protest is denied.

*Posted: 10/28/2009 by Legislative Services Agency*  
An [html](#) version of this document.