

**Letter of Findings Number: 09-0480P
Sales and Use Tax – Negligence Penalty
For the Period December 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 the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. Taxpayer mailed its December 2008 sales tax return and payment to the Indiana Department of Revenue ("Department"). However, the Department determined that the envelope containing the return and payment was postmarked after the due date for the return. Because the postmark date for the payment was later than the due date, the Department assessed a ten-percent negligence penalty. Taxpayer protested 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 request a hearing. 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 based on the Department's claim that Taxpayer mailed the sales tax payment after the due date for the payment.

IC § 6-8.1-6-3 provides:

(a) A document, including a form, a return, a payment, or a writing of any type, which must be filed with the department by a prescribed date, is considered filed:

(1) in cases where it is mailed through the United States mail, on the date displayed on the post office cancellation mark stamped on the document's wrapper;

(2) in cases where it is delivered to the department in any manner other than through the United States mail, on the date on which the department physically receives the document; or

(3) in cases where a payment is made by an electronic fund transfer, on the date the taxpayer issues the payment order for the electronic fund transfer.

(b) If a document is sent through the United States mail by registered mail, certified mail, or certificate of mailing, then the date of the registration, certification, or certificate, as evidenced by any record authenticated by the United States Post Office, is considered the postmark date.

(c) If a document is mailed to the department through the United States mail and is physically received after the appropriate due date without a legible correct postmark, the person who mailed the document will be considered to have filed the document on or before the due date if the person can show by reasonable evidence to the department that the document was deposited in the United States mail on or before the due date.

(d) If a document is mailed to, but not received by, the department, the person who mailed the document will be considered to have filed the document on or before the due date if the person can show by reasonable evidence to the department that the document was deposited in the United States mail on or before the due date and if the person files with the department a duplicate document within thirty (30) days after the date the department sends notice that the document was not received.

Thus, if Taxpayer had a payment due on January 20 and sent the payment via first-class mail, the envelope containing the payment must have a post office cancellation date of January 20 or earlier in order for the payment to be considered timely made.

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 asserts that it mailed the payment on January 17, 2009. The mailing date was prior to the January 20, 2009, due date for the payment. However, the envelope for that payment had a cancellation date of February 2, 2009. Thus, under IC § 6-8.1-6-3, the payment is considered to have been made on February 2, 2009. Beyond the assertion that the payment was mailed prior to January 20, 2009 and a generalized plea of hardship, Taxpayer has not provided legal or factual grounds to justify penalty waiver. Furthermore, Taxpayer has had multiple late filings of sales and employee withholding tax in other periods. Based on the lack of legal and/or factual grounds to justify penalty waiver and Taxpayer's prior compliance history, Taxpayer has not demonstrated reasonable cause to justify penalty waiver.

FINDING

Taxpayer's protest is denied.

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