

DEPARTMENT OF STATE REVENUE

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Letters of Findings Numbers: 09-0493P, 09-0536P, 09-0537P, 09-0538P
Sales and Use Tax – Negligence Penalty
For the Periods 2006-2008

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ISSUE**I. Tax Administration – Negligence Penalty.**

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

Taxpayers protest the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayers are entities doing business in Indiana. The Indiana Department of Revenue ("Department") conducted an audit of Taxpayers. As a result of the audit, the Department assessed sales and use tax, interest, and penalties on the assessments. Taxpayers protested only the penalties.

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

I. Tax Administration–Penalty.**DISCUSSION**

Taxpayers protest 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.

Taxpayers assert their error was "an honest mistake." However, Taxpayers were audited for use tax in previous years and were assessed use tax in that audit. Taxpayers did not remit use tax in the periods after that audit. Furthermore, many of the items assessed were items not reasonably subject to a sales or use tax exemption yet purchased without payment of sales or use tax. By both not remitting use tax for the period and by not self-assessing use tax on taxable items not subject to an exemption, Taxpayers have not demonstrated reasonable cause to justify penalty waiver.

FINDING

Taxpayers' protests are denied.

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