

DEPARTMENT OF STATE REVENUE

04-20090236P.LOF

Letter of Findings Number: 09-0236P
Sales and Use Tax
For the Tax Years 2004, 2005, and 2006

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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 an out-of-state corporation doing business in Indiana. Pursuant to an audit, the Indiana Department of Revenue (Department) assessed use tax, interest, and ten percent negligence penalties for 2004, 2005, and 2006 tax years. Taxpayer requests abatement of the ten percent negligence penalties. The Department makes its determination based on the documentation Taxpayer submitted and the Department's record. Additional facts will be provided as necessary.

I. Tax Administration – Negligence Penalty.

DISCUSSION

The Department assessed use tax on tangible personal property which Taxpayer had purchased during 2004, 2005, and 2006, because Taxpayer did not pay sales tax at the time of the purchases, nor did Taxpayer self-assess and remit to the Department the use tax due. Taxpayer agreed with the Department that it owed and paid those tax liabilities and interest. However, Taxpayer argued that its failure to pay the use tax was not due to negligence, and therefore, Taxpayer requested the Department abate the ten percent negligence penalty.

Pursuant to IC § 6-8.1-10-2.1, the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a tax return;
- (2) fails to pay the full amount of tax shown on the tax return;
- (3) fails to remit in a timely manner the tax held in trust for Indiana (e.g., a sales tax); or
- (4) fails to pay a tax deficiency determined by the Department to be owed by a taxpayer.

[45 IAC 15-11-2](#)(b) further 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.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, as follows:

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 maintained that it made substantial effort to comply with the complicated Indiana Sales and Use Tax laws and regulations when it experienced company reorganization and change of staff. Thus, Taxpayer believes that it is entitled to abatement of the negligence penalty.

The Department's records, however, show previous audits for the years 1990, 1991, 1992, and 1997 had

resulted in additional use tax liabilities. Taxpayer, therefore, was made clearly aware of its compliance failure. Thus, Taxpayer should have corrected its self-assessment method as well as carefully projected and remitted use tax to ensure its compliance. The Department's current audit again revealed Taxpayer's compliance failure. Taxpayer failed to provide sufficient documents establishing that its failure to pay the full amount of tax due was due to reasonable cause and not due to negligence. Thus, Taxpayer's protest on the imposition of negligence penalty is respectfully denied.

FINDING

Taxpayer's protest on the imposition of negligence penalty is respectfully denied.

Posted: 11/25/2009 by Legislative Services Agency
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