

**Letter of Findings: 09-0443P
Negligence Penalty
For the Years 2006 and 2007**

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ISSUE

I. Tax Administration - Ten Percent 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 Indiana company that provides concrete pumping services to contractors. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer which resulted in the proposed assessment of additional use tax, interest, and penalty. The Department also conducted income tax and withholding tax audits of Taxpayer for the same years with no material adjustments proposed. Taxpayer agreed with the assessment of use tax and interest, but protested the assessment of penalty. Taxpayer was provided the opportunity to request a hearing on its protest. Taxpayer did not request a hearing. Therefore, the determination in this Letter of Findings relies on the documentation present in Taxpayer's file. Additional facts will be provided as necessary.

I. Tax Administration - Ten Percent Negligence Penalty.

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty. Taxpayer argues that the majority of the assessment of use tax arises from the purchase of two pump trucks that it purchased from a Michigan company for which it was not charged sales tax. Taxpayer provided documentation to the Department's auditor to show why it had not self-assessed use tax on the purchase of the pumps.

The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

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.

[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.

Taxpayer has a good tax compliance history with the Department. Also, Taxpayer has provided sufficient documentation in support of its protest to establish that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest is sustained.

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