

Letter of Findings Number: 09-0594P
Prepaid Sales Tax – Negligence Penalty
For the Period 2007

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ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-2.5-7-1 et seq.; 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 which sells gasoline at retail through metered pumps. Prior to September 16, 2007, Taxpayer's sole provider of gasoline collected sales tax from Taxpayer based on the amount of gasoline the provider sold to Taxpayer, as permitted under IC § 6-2.5-7-1 et seq. ("prepaid sales tax"). The provider remitted the prepaid sales tax to the Indiana Department of Revenue ("Department"), and Taxpayer claimed a deduction for the prepaid sales tax. However, on September 15, 2007, the provider stopped collecting and remitting prepaid sales tax; nevertheless, Taxpayer claimed deductions for prepaid sales tax based on the gasoline received from the provider.

The Department audited Taxpayer for sales and use tax for the year 2007. As a result of the Department's audit, the Department issued a proposed assessment of sales tax based on the disallowance of the previously-claimed deductions, interest on the assessment, and a ten-percent negligence penalty on the assessment. 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–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on the sales 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 states that it hired an accountant to prepare the required tax form and to inform Taxpayer of the amount of taxes due. Taxpayer asserts that there was a "miscommunication" regarding Taxpayer's prepaid sales

tax during 2007. However, based on the Department's audit progress report, Taxpayer indicated that it received a letter from the gasoline provider that the provider would no longer collect and remit prepaid sales tax after September 15, 2007. Taxpayer forwarded the letter to the accountant.

Based on the letter it received from the gasoline provider, Taxpayer had notice that it was no longer prepaying sales tax to the gasoline provider. Nevertheless, even after receiving the letter, Taxpayer claimed deductions for prepaid sales tax that Taxpayer thought were collected by the gasoline provider. Taxpayer claimed a deduction for prepaid sales tax despite having notice that the provider was no longer in fact collecting and remitting the prepaid sales tax. Taxpayer has not provided legal or factual grounds to establish that Taxpayer's failure to pay sales tax was the result of "reasonable cause." Therefore, Taxpayer has not affirmatively established reasonable cause necessary for penalty waiver.

FINDING

Taxpayer's protest is denied.

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