

**Letter of Findings Number: 09-0575  
Sales and Use Tax  
For the Years 2006-2007**

**NOTICE:** Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Sales and Use Tax—Imposition.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-5-4.

Taxpayer protests the imposition of sales and use tax.

**II. 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. The Indiana Department of Revenue ("Department") audited Taxpayer for sales and use tax for the years 2006 and 2007. The Department determined that Taxpayer's records were inadequate. As a result of the Department's audit, the Department issued proposed assessments of sales and use tax for the years in question based on best information available. Taxpayer protested the imposition of sales and use tax and the associated penalties. The Department conducted an administrative hearing and this Letter of Findings results.

**I. Sales and Use Tax—Imposition.**

**DISCUSSION**

Taxpayer protests the imposition of sales tax on items which Taxpayer sold as a retail merchant and upon which the Department determined that sales tax should have been collected. Also, Taxpayer protests the imposition of use tax on items which Taxpayer consumed in the course of its business operations. Taxpayer argues that the assessment was excessive.

Under IC § 6-8.1-5-1(b):

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

IC § 6-8.1-5-1(c) provides:

If the person has a surety bond guaranteeing payment of the tax for which the proposed assessment is made, the department shall furnish a copy of the proposed assessment to the surety. The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

IC § 6-8.1-5-4(a) provides:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Taxpayer provided partial records and other information which it claimed showed that the tax assessment was incorrect. In particular, Taxpayer provided a number of invoices and other information related to items that Taxpayer claimed were not taxable or demonstrated that Taxpayer had collected and remitted the correct sales tax.

Notwithstanding the volume of information provided by Taxpayer, Taxpayer's argument fails on two grounds. First, Taxpayer's information does not consist of source documents or other documents that would establish that the Department's determination of sales and exemptions was not correct. Second, Taxpayer did not explain how the documentation demonstrated that the Department's assessment was erroneous. Thus, Taxpayer has not met its burden of demonstrating that the Department's proposed assessment was not correct.

**FINDING**

Taxpayer's protest is denied.

**II. Tax Administration—Negligence Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of the ten percent negligence penalty on the sales and use taxes 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 has not established the "reasonable cause" necessary for penalty waiver.

#### **FINDING**

Taxpayer's protest is denied.

#### **CONCLUSION**

Taxpayer's protest is denied on all issues.

*Posted: 12/23/2009 by Legislative Services Agency*

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