

**Letter of Findings Number: 09-0579P**  
**Use Tax – Negligence Penalty**  
**For the Periods 2006-2007**

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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 a company doing business in Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer for sales and use tax for the years 2006 to 2007. As a result of the Department's audit, the Department issued proposed assessments of use tax, interest, and penalties. Taxpayer protested only the penalties.

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 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.

Taxpayer states that the errors "were the result of an oversight in the training of the primary bookkeeper at [Taxpayer]." In particular, Taxpayer states the bookkeeper had worked in one area during previous employment with Taxpayer. When the bookkeeper returned, the bookkeeper was placed in the area responsible for use tax accrual. Taxpayer erroneously assumed that the bookkeeper was aware of use tax accrual requirements. Thus, Taxpayer did not collect use tax for the periods in question.

However, there are two issues with Taxpayer's assertions. First, if Taxpayer is correct, then the errors were the result of Taxpayer's own failure to train the bookkeeper in question. The failure to train does not establish reasonable cause.

Second, the Department's audit covered two years. Of the use tax accrual errors that occurred during the

audit cycle, Taxpayer had the same errors (with one possible exception resulting in \$43 out of a \$9,300 assessment) in periods before and after the bookkeeper's return. Thus, even if Taxpayer's failure to train the bookkeeper constituted reasonable cause for failure to pay use tax for the years in question, the failure to train does not explain Taxpayer's failure to pay use tax unrelated to the bookkeeper's lack of training.

**FINDING**

Taxpayer's protest is denied.

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

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