

Letter of Findings Number: 09-0677P
Sales and Use Tax-Penalty
For the Tax Years 2005, 2006, 2007, 2008

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ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a negligence penalty.

STATEMENT OF FACTS

Taxpayer is a corporation. Taxpayer did not accrue and pay use tax associated with purchases for the 2005-2008 tax years ("Tax Years"). The Department of Revenue (the "Department") conducted an audit of Taxpayer's business and issued use tax assessments for the Tax Years. The Department also assessed interest and penalty.

The taxpayer sent a letter to the Department, requesting a waiver of the penalty. The Department responded with a letter to Taxpayer stating that Taxpayer could request a hearing by replying to the letter within twenty (20) days 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 file and other Department records relating to Taxpayer.

I. Tax Administration–Negligence Penalty.

DISCUSSION

The Department refers to IC § 6-8.1-10-2.1(a)(3), which provides "if a person... incurs, upon examination by the department, a deficiency that is due to negligence... the person is subject to a penalty."

The Department also 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.

The Department may waive the negligence penalty as provided in [45 IAC 15-11-2\(c\)](#):

The department shall waive the negligence penalty imposed under [IC § 6-8.1-10-2] 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.

In this case, Taxpayer incurred deficiencies which the Department determined were due to negligence under [45 IAC 15-11-2\(b\)](#), and were subject to a penalty under IC § 6-8.1-10-2.1(a). Under IC § 6-8.1-5-1(c), "[t]he burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." In its letter requesting waiver, Taxpayer asserted that its failure to pay use tax on various purchases was due to an unknown past information technology systems programming change.

Taxpayer has provided sufficient information to conclude that its failure to pay use tax for the 2005 tax year was due to reasonable cause and not due to willful neglect. However, with respect to failure to accrue and pay use tax on purchases for the 2006, 2007, and 2008 tax years, Taxpayer has not provided sufficient information to conclude that its failure was due to reasonable cause.

FINDING

Taxpayer's protest is sustained for 2005 and denied for 2006, 2007, and 2008.

Posted: 04/28/2010 by Legislative Services Agency

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