

Letter of Findings Number: 09-0772P
Sales Tax
For Tax Year 2009

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ISSUE

I. Tax Administration–Negligence Penalties.

Authority: IC § 6-8.1-10-2.1.

Taxpayer protests the imposition of a portion of a group of ten percent negligence penalties.

STATEMENT OF FACTS

Taxpayer is a corporation in Indiana which operates two restaurants. For the months January, February, March, April, June, and July in 2009, Taxpayer failed to remit monthly sales tax payments on time and/or to remit those sales tax payments via electronic funds transfer ("EFT") as required. As a result, the Indiana Department of Revenue ("Department") issued assessments for ten percent negligence penalties for those months. Taxpayer protests that the Department issued two negligence penalties for each month. Taxpayer believes that only one penalty per month is appropriate. Taxpayer paid some of the assessments and protested others. Taxpayer did not request an administrative hearing. This Letter of Findings is written based on the information contained in the protest file.

I. Tax Administration–Negligence Penalties.

DISCUSSION

Taxpayer protests the imposition of two negligence penalties per month of improperly remitted sales tax. Taxpayer acknowledges that it should be subject to a negligence penalty for those months. However, Taxpayer states that each month's improper remittance, no matter if the impropriety was a result of late payment, non-EFT payment or both, is a single negligent event. Taxpayer does not believe that the fact that, in a single month, it did not remit the sales tax due in a timely manner and did not remit the funds via EFT should make it subject to two negligence penalties.

The negligence penalty is imposed under IC § 6-8.1-10-2.1, which states in relevant part:

(a) If a person:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department; the person is subject to a penalty.

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10[percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

(c) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

(e) A person who wishes to avoid the penalty imposed under this section must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may

also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.

....

(Emphasis added).

IC § 6-8.1-10-2.1(a) provides that, if a person satisfies any of the five categories listed, the person is subject to a penalty. It does not say that the person is subject to multiple penalties if multiple categories are satisfied. Therefore, Taxpayer is correct that only one ten percent negligence penalty should be imposed per month. The Department will redetermine the amount of sales tax which should have been remitted timely via EFT and issue new assessments reflecting a single ten percent negligence penalty per month. The Department will also take into account those amounts which have already been paid.

FINDING

Taxpayer's protest is sustained.

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