

**Letter of Findings Number: 09-0823P**  
**Use Tax**  
**For Tax Years 2006-07**

**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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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.

**ISSUE**

**I. Tax Administration–Negligence Penalty.**

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

Taxpayer protests the imposition of ten percent negligence penalties.

**STATEMENT OF FACTS**

Taxpayer is an Indiana corporation. The Indiana Department of Revenue ("Department") issued proposed assessments for use tax, ten percent negligence penalties, and interest for the tax years 2006 and 2007. Taxpayer does not protest the proposed assessments of use tax, but protests the imposition of negligence penalties. Taxpayer did not request a hearing. The Letter of Findings was written based on the materials in the file. Further facts will be supplied as required.

**I. Tax Administration–Negligence Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of ten percent negligence penalties on assessments made for the tax years 2006-07. Taxpayer states that it acted in good faith regarding its Indiana tax duties and that the few errors which resulted in use tax assessments were being corrected. Taxpayer believes that these circumstances are sufficient to warrant waiver of penalty.

The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department 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.

(Emphasis added.)

[45 IAC 15-11-2](#)(c) provides in pertinent part:

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.

The Department's audit explains that Taxpayer did not have a use tax accrual system in place for the audit period. After reviewing the circumstances which resulted in the assessments of sales and use taxes for this audit period, the Department does not agree with Taxpayer that it exercised ordinary business care and therefore Taxpayer's actions did not constitute reasonable cause, as provided by [45 IAC 15-11-2](#)(c). The negligence penalties will remain as assessed.

**FINDING**

Taxpayer's protest is denied.

*Posted: 05/26/2010 by Legislative Services Agency*

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