

**Letter of Findings: 09-0884P; 09-1008P; 09-1009P****Sales Tax****For the Years 2006, 2007, and 2008**

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**ISSUES****I. Tax Administration – Interest.**

**Authority:** IC § 6-8.1-10-1.

Taxpayer protests the imposition of interest.

**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 an Indiana dealer that sells pre-owned cars and trucks. Pursuant to an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer failed to collect sales tax on the sales of extended/optional warranties to its customers. The Department's audit thus assessed Taxpayer sales tax, interest, and penalty. Taxpayer paid the sales tax but protested the imposition of interest and negligence penalty.

Taxpayer was afforded an additional twenty (20) days to request an administrative hearing or submit more documentation to support its protest. Taxpayer did not request a hearing nor did it provide additional information. Thus, this Letter of Findings was written based on the information within Taxpayer's protest file. Additional facts will be provided as necessary.

**I. Tax Administration – Interest.****DISCUSSION**

The Department assessed interest on the tax liabilities. Taxpayer protests this imposition of interest.

IC § 6-8.1-10-1(a) provides, as follows:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

Pursuant to IC § 6-8.1-10-1(e), the Department does not have the authority to waive the interest. Therefore, Taxpayer's protest is denied.

**FINDING**

Taxpayer's protest on the imposition of interest is respectfully denied.

**II. Tax Administration – Negligence Penalty.****DISCUSSION**

Taxpayer also protests the imposition of the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1, the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a tax return;
- (2) fails to pay the full amount of tax shown on the tax return;
- (3) fails to remit in a timely manner the tax held in trust for Indiana (e.g., a sales tax); or
- (4) fails to pay a tax deficiency determined by the Department to be owed by a taxpayer.

[45 IAC 15-11-2](#)(b) further 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 a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, as follows:

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 failed to provide sufficient documentation establishing that its failure to timely remit tax was due to reasonable cause and not due to negligence.

#### **FINDING**

Taxpayer's protest on the imposition of negligence penalty is respectfully denied.

#### **SUMMARY**

For the reasons discussed above, Taxpayer's protest on the imposition of interest is respectfully denied. Taxpayer's protest on the imposition of negligence penalty is also respectfully denied.

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

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