

**Letter of Findings Number: 09-0950P
Sales and Use Tax – Late Payment Penalty
For the Period May 2009**

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ISSUE

I. Tax Administration – Late Payment Penalty.

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

Taxpayer protests the imposition of the ten percent late payment penalty.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. Taxpayer submitted its May 2009 payment after the statutory deadline for such payment. The Indiana Department of Revenue ("Department") assessed a penalty for late payment, which Taxpayer protested. The Department conducted an administrative hearing, and this Letter of Findings results.

I. Tax Administration – Late Payment Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent penalty for late payment of Taxpayer's monthly sales tax.

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 stated that it made an oversight in remitting its May sales tax and immediately paid it upon discovery of the oversight. Taxpayer further stated that seventy percent of its annual business occurred from March to June. Finally, Taxpayer acknowledged a second late payment later in 2009 and remitted that payment along with interest and penalty.

While Taxpayer has taken responsibility for the later period and has shown that the May period was an exceptionally busy period relative to Taxpayer's overall operations, Taxpayer has not shown that its failure to remit sales tax on or before the statutory deadline was the result of reasonable cause.

FINDING

Taxpayer's protest is denied.

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