

Letter of Findings Number: 10-0086P
Sales Tax
For Tax Year 2009

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ISSUE

I. Tax Administration—Dishonored Payment Penalty.

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

Taxpayer protests the imposition of one hundred percent dishonored payment penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation. The Indiana Department of Revenue ("Department") issued proposed assessments for sales tax, one hundred percent dishonored payment penalty, and interest for a payment due in the tax year 2009. Taxpayer does not protest the assessments of sales tax and interest, but protests the imposition of dishonored payment penalty. 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—Dishonored Payment Penalty.

DISCUSSION

Taxpayer protests the imposition of one hundred percent dishonored payment penalty on a payment due in the tax year 2009. Taxpayer states that its business was negatively impacted by road construction near its location. This construction reduced the number of customers who were able to patronize Taxpayer's business. Taxpayer believes that these circumstances are sufficient to warrant waiver of penalty.

The Department refers to IC § 6-8.1-10-5, which states:

(a) If a person makes a tax payment with a check, credit card, debit card, or electronic funds transfer, and the department is unable to obtain payment on the check, credit card, debit card, or electronic funds transfer for its full face amount when the check, credit card, debit card, or electronic funds transfer is presented for payment through normal banking channels, a penalty of ten percent (10[percent]) of the unpaid tax or the value of the check, credit card, debit card, or electronic funds transfer, whichever is smaller, is imposed.

(b) When a penalty is imposed under subsection (a), the department shall notify the person by mail that the check, credit card, debit card, or electronic funds transfer was not honored and that the person has ten (10) days after the date the notice is mailed to pay the tax and the penalty either in cash, by certified check, or other guaranteed payment. If the person fails to make the payment within the ten (10) day period, the penalty is increased to one hundred percent (100 [percent]) multiplied by the value of the check, credit card, debit card, or electronic funds transfer, or the unpaid tax, whichever is smaller.

(c) If a person has been assessed a penalty under subsection (a) more than one (1) time, the department may require all future payments for all listed taxes to be remitted with guaranteed funds.

(d) If the person subject to the penalty under this section can show that there is reasonable cause for the check, credit card, debit card, or electronic funds transfer not being honored, the department may waive the penalty imposed under this section.

(Emphasis added).

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

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The Department was unable to obtain payment on Taxpayer's check due to insufficient funds. Taxpayer did not pay the tax within the ten days of notice as required by IC § 6-8.1-10-5(b). The penalty was therefore increased to one hundred percent. Then, Taxpayer did pay the underlying sales tax due, but did not pay the one hundred percent penalty.

[45 IAC 15-11-2](#) provides that 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's slower business would have reduced the amount of sales tax due but would have had nothing to do with Taxpayer's duty to have sufficient funds in its checking account. Also, after review of the Department's records, this is not the first time Taxpayer has had this penalty imposed. Taxpayer's argument does not establish a reasonable cause for the dishonored payment and the penalty will remain as issued.

FINDING

Taxpayer's protest is denied.

