

**Letter of Findings Number: 10-0131P  
Sales and Use Tax – Negligence Penalty  
For the Periods 2007-2008**

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**ISSUE**

**I. 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 a company doing business in Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer for sales and use tax for the years 2007 and 2008. As a result of the Department's audit, the Department issued proposed assessments of sales and use tax, interest, and penalties. Taxpayer protested only the penalties.

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

**DISCUSSION**

Taxpayer protests the imposition of the ten percent negligence penalty on the sales and use tax imposed as a result of the Department's audit.

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.

Eighty-two percent of Taxpayer's assessment is based on taxable diesel fuel sales on which Taxpayer collected no sales tax. Taxpayer's sales of diesel fuel are subject to guidelines set forth by statutes and Department interpretations of those statutes regarding exempt sales. The statutes and Department interpretations of those statutes are not novel or unclear as applied to Taxpayer's operations. Based on Taxpayer's failure to follow statutory procedures on exemption certificates, its failure to collect sales tax on items that Indiana has explicitly stated are taxable, the magnitude of these failures, and Taxpayer's prior compliance history, Taxpayer has not demonstrated reasonable cause sufficient to justify penalty waiver.

**FINDING**

Taxpayer's protest is denied.

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