

**Letter of Findings Number: 09-0915P**  
**Sales Tax**  
**For Tax Year 2009**

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**ISSUE**

**I. Tax Administration–Faulty Payment Penalties.**

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

Taxpayer protests the imposition of ten percent penalties.

**STATEMENT OF FACTS**

Taxpayer is a business operating in Indiana. Taxpayer made two sales tax payments via electronic funds transfer ("EFT") for the July and August 2009 tax periods. When the Indiana Department of Revenue ("Department") attempted to transfer the funds from Taxpayer's bank, the transfers did not go through due to an incorrect account number. As a result, the Department issued a proposed assessment for the sales tax and a faulty payment penalty for each of the periods. Taxpayer protests the imposition of the penalties. Further facts will be supplied as required.

**I. Tax Administration–Faulty Payment Penalties.**

**DISCUSSION**

Taxpayer protests the imposition of penalties on its July and August 2009 sales tax payments. When the Department attempted to transfer the funds from Taxpayer's account for the payments, Taxpayer's bank did not approve the transfers, due to an incorrect account number. The account number provided was wrong by one number. The incorrect digit resulted in an incorrect account number and the funds were not transferred.

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 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.

The Department directly notified Taxpayer of the problem with the transfer and, in accordance with IC § 6-8.1-10-5, sent a notice for payment of the original amount of the transfer plus a ten percent penalty. Taxpayer paid the ten percent penalty within ten days of the Department's mailed notice, and, thus avoided the penalty being increased to one hundred percent as provided in IC § 6-10-8.1-5(b).

Taxpayer argues that it should be refunded the ten-percent penalty because its mistaken entry of its account number was inadvertent and that it acted quickly to correct its mistake by making payments of the tax and penalty for each period within the ten days. Taxpayer states that since it has only owned the business since January of 2009 and that it is still learning the State's requirements. Taxpayer maintains that it has had some difficulties lately as it recently had to change its bank accounts because it was a victim of fraud. Taxpayer was using the new bank account number to send the payments. Taxpayer provided a copy of its account balance for the dates in question to show that it had sufficient funds had the tax payments been made. Taxpayer believes that these circumstances are sufficient to warrant waiver of penalty.

As provided in IC § 6-10-8.1-5(c), the Department may waive the faulty payment penalty if the taxpayer can demonstrate there was "reasonable cause" for the taxpayer's faulty payment. [45 IAC 15-11-5](#) states, "For purposes of [IC 6-8.1-10-5](#), reasonable cause for waiving the penalty shall constitute circumstances which were totally beyond the control of the taxpayer. Determination of reasonable cause is at the discretion of the department."

Additionally, the fact that the faulty payment penalty statute actually stages from a ten-percent penalty to a one-hundred percent penalty within a short period of time suggests that the Indiana legislature intended for faulty

payments to be held to a high bar.

In the instant case, Taxpayer has merely shown the existence of a mistaken entry of the digits of its account number due to inattention. The circumstances presented by Taxpayer do not demonstrate that it exercised "reasonable cause." Thus, penalty waiver is not warranted.

**FINDING**

Taxpayer's protest is respectfully denied.

*Posted: 09/29/2010 by Legislative Services Agency*

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