

Letter of Findings: 09-0745
Sales and Use Tax
For the Years 2006, 2007, and 2008

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ISSUES

I. Sales and Use Tax – Exemptions.

Authority: IC § 6-2.5-1-1 et seq.; IC § 6-2.5-3-4; IC § 6-2.5-5-3; IC § 6-2.5-5-5.1; IC § 6-8.1-5-1; [45 IAC 2.2-5-8](#); [45 IAC 2.2-5-11](#); [45 IAC 2.2-5-12](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974); Indiana Dep't of State Revenue v. U.S. Steel Corp., 425 N.E.2d 659 (Ind. Ct. App. 1981); Indiana Dep't of State Revenue v. Harrison Steel Casting, 402 N.E.2d 1276 (Ind. Ct. App. 1980); Rotation Prod. Corp. v. Indiana Dep't of State Revenue, 690 N.E.2d 795 (Ind. Tax Ct. 1998); N. Cent. Indus., Inc. v. Indiana Dep't of State Revenue, 790 N.E.2d 198 (Ind. Tax Ct. 2003).

Taxpayer protests the assessment of tax on purchases of tangible personal property.

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, an out-of-state company, operates manufacturing facilities in Indiana which produce various automotive parts for the automotive industry. The Indiana Department of Revenue ("Department") conducted a sales/use tax audit concerning Taxpayer's asset and expense purchases for tax years 2006, 2007, and 2008. The Department and Taxpayer agreed to utilize a statistical sample to establish Taxpayer's tax liabilities on its expense purchases while Taxpayer's asset purchases were examined individually. As a result, the Department assessed Taxpayer additional use tax, interest, and penalty because Taxpayer did not pay sales tax at the time of the transactions nor did it self-assess and remit use tax to the Department.

Taxpayer timely protested the assessments. To support its protest, Taxpayer submitted additional documentation and directed the Department's attention to an itemized list of its protest. Prior to the administrative hearing, Taxpayer agreed that some of the listed purchases were taxable while the Department agreed that the assessment of tax on some of the listed items should be either adjusted or removed because Taxpayer has provided sufficient documentation demonstrating that it was entitled to exemptions.

Taxpayer, however, continued to protest the remaining items on its protest list. A hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales and Use Tax – Exemptions.

DISCUSSION

The Department's audit assessed Taxpayer use tax on purchases of tangible personal property. Taxpayer, to the contrary, claimed that it was entitled to statutory exemptions on its purchases of the tangible personal property.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Indiana imposes a sales tax on retail transactions and a complementary use tax on tangible personal property that is stored, used, or consumed in the state. IC § 6-2.5-1-1 et seq. Generally, all purchases of tangible personal property by persons engaged in the direct production, manufacture, fabrication, assembly or finishing of tangible personal property are taxable. [45 IAC 2.2-5-8\(a\)](#). An exemption from use tax is granted for transactions where the gross retail tax ("sales tax") was paid at the time of purchase pursuant to IC § 6-2.5-3-4. There are also additional exemptions from sales tax and use tax. A statute which provides a tax exemption, however, is strictly construed against the taxpayer. Indiana Dep't of State Revenue v. RCA Corp., 310 N.E.2d 96, 97 (Ind. Ct. App. 1974).

A. Items Agreed to be Subject to Statutory Exemptions.

Prior to the administrative hearing, based on the information Taxpayer submitted, the Department agreed that Taxpayer was entitled to statutory exemptions on some of its purchases, as follows:

Expenses—Safety Equipment

- Ear Plugs: 85 percent exempt.
- Leather Palm Gloves: 90 percent exempt.
- Anti-Vibration Gloves: 90 percent exempt.

- Dust Respirators & Particulate Respirators: 90 percent exempt.
- Coveralls with Hood & Boots: 90 percent exempt.
- Elastic Wrist Coveralls: 90 percent exempt.
- Inspector Gloves: 90 percent exempt.

Expenses–Wrapping Materials

- Nylon Cable Ties: 100 percent exempt.

Expenses–Manufacturing Equipment & Consumables

- ECB Torit Filters: 100 percent exempt.
- Rust Buster Salt: 100 percent exempt.
- Renoclean: 75 percent exempt.
- Xylene: 100 percent exempt.
- Miscellaneous Repair Parts (within the Statistical Sample)
 - #2-85 - Kirby Risk, AB Red Pushbutton, exempt.
 - #3-100 - Kirby Risk, Switch Pushbutton, exempt.
 - #5-124 - K + S Services, Repairs & Maintenance, exempt.

Expenses–Services

- Auto Technology: labor charge for the repair of test equipment, exempt.
- ETSS: labor charge concerning the rental of the VAC truck, exempt.

Taxpayer, however, continued its protest, stating that it was entitled to the manufacturing exemptions concerning its purchases of the Lifeline 4 Cable Pull, the Light Curtain Emitters, as well as a baler and repair parts.

B. Manufacturing Exemptions.

The Department's audit assessed Taxpayer use tax on its purchases of the Lifeline 4 Cable Pull, the Light Curtain Emitters, as well as the baler and repair parts. Taxpayer, to the contrary, asserted that the Lifeline 4 cable Pull and the Light Curtain Emitters were required safety equipment to protect its employees. Taxpayer further claimed that the baler and the repair parts were directly used in the direct production and, therefore, should be exempt from sales and/or use tax.

IC § 6-2.5-5-3(b) states:

Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

IC § 6-2.5-5-5.1(b) provides:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in the person's business of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture.

An exemption applies to manufacturing machinery, tools, and equipment directly used by the purchaser in direct production. [45 IAC 2.2-5-8\(a\)](#). Machinery, tools, and equipment are directly used in the production process if they have an immediate effect on the article being produced. [45 IAC 2.2-5-8\(c\)](#). A machine, tool, or piece of equipment has an immediate effect on the product being produced if it is an essential and integral part of an integrated process that produces the product. Id. An integrated process is one where the total production process is comprised of activities or steps that are functionally interrelated and where there is a flow of "work-in-process." [45 IAC 2.2-5-8\(c\)](#), example 1.

[45 IAC 2.2-5-8\(k\)](#) describes direct production as the performance of an integrated series of operations which transforms the matter into a form, composition or character different from that in which it was acquired, and that the change must be substantial resulting in a transformation of the property into a different and distinct product.

The exemption for direct use in production is further explained at [45 IAC 2.2-5-11](#), in part, as follows:

(a) The state gross retail tax shall not apply to sales of tangible personal property to be directly used by the purchaser in the direct production or manufacture of any manufacturing or agricultural machinery, tools, and equipment described in [IC 6-2.5-5-2](#) or 6-2.5-5-3 [[IC 6-2.5-5-3](#)].

(b) The exemption provided in this regulation [[45 IAC 2.2](#)] extends only to tangible personal property directly used in the direct production of manufacturing or agricultural machinery, tools, and equipment to be used by such manufacturer or producer.

(c) The state gross retail tax shall not apply to purchases of tangible personal property to be directly used by the purchaser in the production or manufacturing process of any manufacturing or agricultural machinery, tools, or equipment, provided that the machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect upon the article being produced or manufactured. The property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

(d) For the application of the rules [subsections] above, refer to Regs. 6-2.5-5-3 [[45 IAC 2.2-5-8](#) through [45 IAC 2.2-5-10](#)] with respect to tangible personal property used directly in the following activities:

pre-production and post-production activities; storage; transportation; tangible personal property which has an immediate effect upon the article produced; maintenance and replacement; testing and inspection; and managerial, sales, and other nonoperational activities.

The exemption for direct consumption in production is further explained at [45 IAC 2.2-5-12](#), in part, as follows:

- (a) The state gross retail tax shall not apply to sales of any tangible personal property consumed in direct production by the purchaser in the business of producing tangible personal property by manufacturing, processing, refining, or mining.
- (b) The exemption provided by this regulation [\[45 IAC 2.2\]](#) applies only to tangible personal property to be directly consumed in direct production by manufacturing, processing, refining, or mining. It does not apply to machinery, tools, and equipment used in direct production or to materials incorporated into the tangible personal property produced.
- (c) The state gross retail tax does not apply to purchases of materials to be directly consumed in the production process or in mining, provided that such materials are directly used in the production process; i.e., they have an immediate effect on the article being produced. The property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

[45 IAC 2.2-5-8](#)(d) states:

Pre-production and post-production activities. "Direct use in the production process" begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required.

[45 IAC 2.2-5-8](#)(f) provides:

- (1) Tangible personal property used for moving raw materials to the plant prior to their entrance into the production process is taxable.
- (2) Tangible personal property used for moving finished goods from the plant after manufacture is subject to tax.
- (3) Transportation equipment used to transport work-in-process or semi-finished materials to or from storage is not subject to tax if the transportation is within the production process.
- (4) Transportation equipment used to transport work-in-process, semi-finished, or finished goods between plants is taxable, if the plants are not part of the same integrated production process.

[45 IAC 2.2-5-8](#)(g) further states:

"Have an immediate effect upon the article being produced": Machinery, tools, and equipment which are used during the production process and which have an immediate effect upon the article being produced are exempt from tax. Component parts of a unit of machinery or equipment, which unit has an immediate effect on the article being produced, are exempt if such components are an integral part of such manufacturing unit. The fact that particular property may be considered essential to the conduct of the business of manufacturing because its use is required either by law or by practical necessity does not itself mean that the property "has an immediate effect upon the article being produced." Instead, in addition to being essential for one of the above reasons, the property must also be an integral part of an integrated process which produces tangible personal property.

To support its protest, Taxpayer submitted documentation and photos to illustrate its applications of the Lifeline 4 Cable Pull, the Light Curtain Emitters, and the baler.

1. Lifeline 4 Cable Pull and Light Curtain Emitters.

The Department's audit determined that while the Lifeline 4 Cable Pull and the Light Curtain Emitters "are used to shut down manufacturing equipment when a cable is pulled or a light beam is broken," neither of them has a transformational effect on the products being manufactured. Taxpayer, however, claimed that it was entitled to the exemption pursuant to *Indiana Dep't of State Revenue v. U.S. Steel Corp.*, 425 N.E.2d 659 (Ind. Ct. App. 1981) and [45 IAC 2.2-5-8](#)(c), example (2)(F).

[45 IAC 2.2-5-8](#)(c) states:

The state gross retail tax does not apply to purchases of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the production process provided that such machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

--EXAMPLES--

...

- (2) The following types of equipment constitute essential and integral parts of the integrated production process and are, therefore, exempt. The fact that such equipment may not touch the work-in-process or, by itself, cause a change in the product, is not determinative.

...

- (F) **Safety clothing or equipment which is required to allow a worker to participate in the production**

process without injury or to prevent contamination of the product during production. (**Emphasis added**).

In *U.S. Steel*, the appellate court affirmed the trial court's findings, in favor of the taxpayer, *U.S. Steel Corp.*, that it was entitled to the manufacturing exemption concerning its purchases of personal protective equipment, including, but not limited to, prescription safety eyeglasses, protective mittens, hardhats, goggles, masks, hoods, jackets and aprons. The *U.S. Steel* court refined the application of the "double direct standard" illustrated in *Indiana Dep't of State Revenue v. Harrison Steel Casting*, 402 N.E.2d 1276 (Ind. Ct. App. 1980) and focused on "whether the safety equipment is an integral part of manufacturing and operates directly on the product during production."

Acknowledging that the "*U.S. Steel's* safety equipment was one of the tools used by workers to accomplish the job," The *U.S. Steel* court concluded that:

Since steel can be made only because shielded workers deal directly with the raw materials of the product, the shields not only protect the worker but are a part of manufacturing which operates directly on the product during production.

U.S. Steel, 425 N.E.2d at 664.

In this instance, Taxpayer stated that the Lifeline 4 Cable Pull "enables workers to stop the manufacturing process due to an emergency" and "[t]his is required by OSHA." As [45 IAC 2.2-5-8\(g\)](#) explains, however, "[t]he fact that particular property may be considered essential to the conduct of the business of manufacturing because its use is required either by law or by practical necessity does not itself mean that the property has an immediate effect upon the article being produced." (internal quotation marks omitted). The Department's audit noted that the Lifeline 4 Cable Pull did not have "a transformational effect on the goods being produced." Rather, the Department's audit noted that the Lifeline 4 Cable Pull was "used to shut down manufacturing equipment when a cable is pulled" and "the equipment must then be manually restarted after shutdown." Taxpayer's documentation merely supported the fact that Taxpayer followed the OSHA's general safety requirements for all machines. While Taxpayer maintained that the Lifeline 4 Cable Pull "enables workers to stop the manufacturing process due to an emergency," Taxpayer failed to demonstrate that the Lifeline 4 Cable Pull is "required to allow a worker to participate in the production process without injury" or is "an integral part of manufacturing and operates directly on the product during production" outlined in *U.S. Steel*.

Additionally, Taxpayer maintained that:

[The Light Curtain Emitters] is safety equipment attached to [an] automated manufacturing press. It consists of two pieces attached to either side of the production equipment that emits a light beam across the face of the machine. If during the operation of the equipment the light beam is broken the machine stops production. This prevents a worker from having any part of their body come in contact with the machine while it is operating and thus, preventing the operator from losing a portion of their body.

Taxpayer's documentation demonstrated that the Light Curtain Emitters is "required to allow a worker to participate in the production process without injury." Therefore, Taxpayer has provided sufficient documentation to support its claim that the Light Curtain Emitters is exempt pursuant to [45 IAC 2.2-5-8\(c\)](#), example (2)(F).

In short, Taxpayer's protest on Light Curtain Emitters is sustained, but its protest on the Lifeline 4 Cable Pull is respectfully denied. The Department will recalculate the assessment in a supplemental audit.

2. Baler and Repair Parts.

The Department's audit assessed Taxpayer use tax on its purchases of a baler and baler repair parts. Taxpayer maintained that it utilized the baler to prepare its scrap metal for sale and asserted that "the baler is a continuation of manufacturing process that results in a saleable product." Taxpayer thus claimed that its purchases of the baler and the repair parts were exempt from sales and/or use tax.

The Indiana Tax Court has provided explanation of the manufacturing exemption in *Rotation Prod. Corp. v. Indiana Dep't of State Revenue*, 690 N.E.2d 795 (Ind. Tax Ct. 1998), where the taxpayer was engaged in remanufacturing ball bearings. In that case the court explained:

Cave Stone's approach to the industrial exemptions has been applied to cases where the question was whether a product was created. For example, in *Harlan Sprague Dawley*, this Court drew from the teaching of Cave Stone in concluding that specially bred laboratory rats were products: "In the context of the industrial exemptions, production is viewed expansively as all activity directed to increasing the number of scarce economic goods." *Harlan Sprague Dawley*, 605 N.E.2d at 1228 (quoting Cave Stone, 457 N.E.2d at 524) (internal quotation marks omitted)). The laboratory rats were scarce economic goods. Laboratories used them for specialized research, and the rats were much more suitable for that research than their naturally occurring counterparts. Consequently, this Court found that they were products and held that the taxpayer was entitled to the industrial exemptions.

Id. at 799.

The court further explained:

Subsequent case law has reemphasized *Harlan Sprague Dawley's* focus on whether a product was created. In *Mechanics Laundry & Supply, Inc. v. Dep't of State Revenue*, 650 N.E.2d 1223 (Ind. Tax Ct. 1994), this Court evaluated whether the laundering of textiles constituted processing in the context of the industrial exemptions. In concluding that it did not, this Court found that the laundering of soiled textiles merely

"perpetuated textiles that were produced by others." *Id.* at 1230 (citing *Undercofler v. Macon Linen Serv., Inc.*, 114 Ga. App. 231, 241, 150 S.E.2d 703, 709 (1966)). See also *Indiana Waste Sys. v. Dep't of State Revenue*, 633 N.E.2d 359 (Ind. Tax Ct. 1994) (taxpayer not entitled to exemption where taxpayer compressed garbage but did not produce other tangible personal property). Because the taxpayer in *Mechanics Laundry* produced no new tangible personal property, it was not entitled to the industrial exemption.

In *Mid-America Energy Resources*, this Court held that a taxpayer who chilled water for use in customers' air conditioning systems was entitled to an exemption for equipment used and materials consumed in the production of the chilled water. This Court focused its inquiry on whether the taxpayer's operation created a marketable good. "When goods are not produced, and a service is provided, the [industrial] exemptions are properly denied." (internal citation omitted).

Id. at 799-80.

The court further provided:

The case law reveals three factors germane to this fact-sensitive inquiry. The first is an adaptation of the requirement of a substantially different end product: the substantiality and complexity of the work done on the existing article and the physical changes to the existing article, including the addition of new parts. The other two factors derive from the observations of the courts dealing with this issue: a comparison of the article's value before and after the work, and how favorably the performance of the remanufactured article compares with the performance of newly manufactured articles of its kind. Additionally, this Court concludes that another factor is applicable to this inquiry: whether the work performed was contemplated as a normal part of the life cycle of the existing article. This additional factor will prevent work that merely perpetuates existing products from qualifying for an industrial exemption. See *Mechanics Laundry*, 650 N.E.2d at 1230.

Id. at 802-3.

Finally, the court explained:

Finally, an analysis of the fourth factor favors RPC as well. Even if cleaning and polishing are a normal part of a roller bearing's life cycle (i.e., routine maintenance), it cannot be said that grinding away the load bearing surfaces of the roller bearing and replacing the roller cages and rolling elements are a normal part of that life cycle. (When RPC's customers bring the non-functional bearings to RPC, they do not know whether the bearings can be salvaged at all.) This is to be contrasted with the shirts at issue in *Mechanics Laundry*. Shirts are bought with the expectation that they will be washed again and again. No such expectation attaches to the purchase of roller bearings.

Id. at 803-4.

The court concluded that the taxpayer in that case was entitled to the exemption since its activities resulted in an essentially new product which went beyond the expected life cycle of the ball bearings as originally produced.

In the instant case, Taxpayer bales its scrap metal after its manufacturing production is concluded and the automotive parts, the finished products, were produced. Unlike the activities in *Rotation Products*, Taxpayer's use of the baler did not result in a product which goes beyond the expected life cycle of the scrap metal. Unlike the activities in *Cave Stone*, which created a marketable product, Taxpayer's activities do not create a marketable product. Although Taxpayer produced a single sample invoice demonstrating that it could sell the scrap metal, which had some monetary value, Taxpayer's documentation stated that the scrap metal was "sold" and "shipped" to a "scrap program" managed by one of its Indiana facilities. Thus, the baled scrap metal was the by-product after Taxpayer completed its manufacturing production and the use of the baler was post-production.

Taxpayer's documentation also demonstrated that its activities repackage the pre-existing product. This is a similar situation to *N. Cent. Indus., Inc. v. Indiana Dep't of State Revenue*, 790 N.E.2d 198 (Ind. Tax Ct. 2003), where the taxpayer bought fireworks in bulk and sold packages containing a variety of fireworks. In that case, the court explained:

Although "there are innumerable ways to produce other tangible personal property, [Indiana Code Section 6-2.5-5-3] cannot be expected to give a precise answer to each factual situation that arises." *Rotation Prod.*, 690 N.E.2d at 798. Nevertheless, the Department's rules make clear that production must entail a "substantial" change or transformation that "places tangible personal property in a form, composition, or character different from that in which it was acquired." IND. ADMIN. CODE tit. 45, r. 2.2-5-8(k) (2001). Moreover, production must increase the number of "scarce economic goods," i.e., it must create a new, marketable product. *Harlan Sprague Dawley, Inc. v. Indiana Dep't of State Revenue*, 605 N.E.2d 1222, 1226 (Ind. Tax Ct. 1992) (quoting *Borden Co. v. Borella*, 325 U.S. 679, 89 L. Ed. 1865, 65 S. Ct. 1223 (1945)). *Id.* at 200.

Also, the court explained:

North Central does not create a new, marketable product; it merely packages existing fireworks into boxes, then labels and shrink-wraps them. This is not the sort of substantial change or transformation that places the fireworks "in a form, composition, or character different from that in which [they were] acquired." [45 IAC 2.2-5-8\(k\)](#). See also *Indianapolis Fruit*, 691 N.E.2d at 1386; *Mechanics Laundry & Supplies, Inc. v. Indiana Dep't of State Revenue*, 650 N.E.2d 1223, 1229 (Ind. Tax Ct. 1995) (holding that producing a good is not merely

perpetuating already existing goods); Harlan Sprague Dawley. 605 N.E.2d at 1229; Faris Mailing, 512 N.E.2d at 483. Nor does North Central's process increase the number of "scarce economic goods," see Harlan Sprague Dawley, 605 N.E.2d at 1225, because the same number of fireworks are sold regardless of the way they are packaged. Consequently, North Central's activities do not constitute the direct production or manufacture of other tangible personal property.

Id. at 201-2.

In the instant case, Taxpayer did not substantially change or transform the scrap metal. Taxpayer simply repackaged the scrap metal in bales after its manufacturing process is completed and its finished products were produced. As provided by Rotation Prod. and N. Cent. Indus., a taxpayer's activities must result in something new in order to qualify for the exemption found in IC § 6-2.5-5-3(b). Taxpayer's activities result in repackaging of the same scrap metal, from unbaled to baled. There is nothing new produced. Therefore, the Department is not able to agree that Taxpayer met its burden pursuant to IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest on Light Curtain Emitters is sustained. However, Taxpayer's protest on the Lifeline 4 Cable Pull as well as the baler and the repair parts is respectfully denied. The Department will recalculate the assessment in a supplemental audit.

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 has not provided sufficient documentation establishing that its failure to pay tax or timely remit tax was due to reasonable cause and not due to negligence.

FINDING

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

SUMMARY

For the reasons discussed above, Taxpayer's protest on Light Curtain Emitters is sustained. Taxpayer's protest on the Lifeline 4 Cable Pull as well as the baler and the repair parts is respectfully denied. Taxpayer's protest on the imposition of the negligence penalty is also respectfully denied. The Department will recalculate the assessment in a supplemental audit.

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