

**Letter of Findings Number: 10-0525P  
Negligence Penalty  
For the Years 2008 and 2009**

Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**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 was assessed negligence penalty. Taxpayer protested the penalty.

The Department sent correspondence dated September 21, 2010, offering Taxpayer the opportunity to have a hearing and/or submit additional documentation. Taxpayer did not reply to the Department's letter. Due to Taxpayer's failure to reply, this Letter of Findings is written based on the information in Taxpayer's protest file and other information available to the Department.

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

**DISCUSSION**

Taxpayer is an Indiana service provider not registered for sales/use tax. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer for the years 2008 and 2009. The Department's audit found that Taxpayer had not remitted use tax on certain items and therefore assessed Taxpayer additional use tax. Taxpayer paid the base tax, but protests the imposition of a penalty.

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 states that it has a good compliance record for withholding and income tax reporting. Taxpayer explains that extenuating circumstances outside its control resulted in vendors not charging it sales tax. However, Taxpayer was assessed use tax. Taxpayer was in a position to know that it had not been charged sales tax and was therefore obligated to remit use tax. Taxpayer has not overcome its burden to show that waiver of penalty is justified.

**FINDING**

Taxpayer's protest is respectfully denied.

*Posted: 01/26/2011 by Legislative Services Agency*

