

**Letter of Findings Number: 10-0610P
Sales and Use Tax – Penalty
For the Period August 2010**

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ISSUE

I. Tax Administration–Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent late-payment penalty.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. Taxpayer filed its August 2010 sales tax return prior to the statutory deadline; however, Taxpayer did not remit the tax. Taxpayer remitted the tax after the statutory deadline. The Indiana Department of Revenue ("Department") assessed penalty on the tax, which Taxpayer protested.

I. Tax Administration–Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent penalty on its late sales tax payment.

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 erroneously did not schedule the payment in controversy at the same time it filed its monthly sales tax return. Taxpayer further states that it promptly paid the liability when the nonpayment was discovered. While Taxpayer has provided an explanation for the late payment of sales tax, Taxpayer does not demonstrate how the events demonstrated "reasonable cause" for nonpayment of the sales tax in question. Furthermore, Taxpayer's payment history lists multiple late-filed returns and late tax payments, further indicating that the current nonpayment was the result of negligence. Taxpayer has not otherwise provided legal or factual grounds to justify penalty waiver.

FINDING

Taxpayer's protest is denied.

Posted: 01/26/2011 by Legislative Services Agency

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