

**Supplemental Letter of Findings Number: 10-0474P
Sales and Use Tax –Penalty
For the Period April 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 April 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 interest and penalty on the tax, which Taxpayer protested.

The Department previously issued a Letter of Findings denying Taxpayer's protest. Taxpayer requested a rehearing, which the Department granted. This Supplemental Letter of Findings results.

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 thought that it had scheduled 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. Taxpayer further explained the circumstances of the late payment and that this particular issue was a unique circumstance in its operations. In this case—notwithstanding Taxpayer's prior payment history—Taxpayer has provided sufficient information to justify penalty waiver under the facts and circumstances presented. However, if a similar issue arises in the future, the Department will be more reluctant to grant penalty waiver.

FINDING

Taxpayer's protest is sustained.

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