

Letter of Findings Number: 04-20100642P
Sales and Use Tax –Penalty
For the Periods June 2009 through August 2010

NOTICE: 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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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–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. According to Taxpayer, Taxpayer switched to using management software for "estimating and invoicing of our customers." The management software was designed to import invoice and payment information into a second program. Taxpayer filed monthly Indiana sales tax returns based on the information in the second program. However, for several months, the appropriate payment information was not being imported correctly.

Upon discovery of the payment importing issue, Taxpayer filed amended Indiana sales tax returns to reflect the correct amount of Indiana sales tax due and paid the additional tax and interest. 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 promptly paid the underpaid sales tax liability when the error with the second program 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 underpayments for the periods in question were in excess of ninety percent of the actual tax liabilities for the fifteen-month period. Taxpayer has not otherwise provided legal or factual grounds to justify penalty waiver and therefore is denied.

FINDING

Taxpayer's protest is denied.

