

**Letters of Findings Number: 04-20100702P
Sales and Use Tax – Negligence Penalty
For the Period 2010**

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ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-5-1(c); 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 operates retail stores. In its protest letter Taxpayer states it received proposed assessments from the Indiana Department of Revenue ("Department"). Taxpayer's protest letter states it requests "that the proposed penalty be abated." Thus Taxpayer's protest relates only to the ten percent penalty. The Department sent a letter to Taxpayer stating that if Taxpayer "desire[d] a hearing in order to personally present additional evidence" to contact the Department "within twenty (20) days of the date of the letter." Taxpayer did not reply to the Department's letter, therefore this Letter of Findings is written based on the information in Taxpayer's protest file and other Department records relating to Taxpayer.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty as it relates to sales tax.

The Department notes that under IC § 6-8.1-5-1(c) that "[t]he burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

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.

(Emphasis added)

Taxpayer in its protest letter states, in relevant part, that it changed its "primary bank" and that:

The electronic funds request to make our sales tax payments to the Indiana Department of Revenue did not get changed accurately. Thus our timely requests for electronic payments did not happen. [Taxpayer's] Accounting Manager, was not aware of this error until reconciling our bank statements and communication from your office. We sincerely believed that the "change of banks" had been recorded properly.

Taxpayer argues that its "timely payment history with the Indiana Department of Revenue" demonstrates that it has "an excellent record of timely payments." Taxpayer has not met its burden of proof under IC § 6-8.1-5-1(c) –that is, Taxpayer has failed to establish that the "deficiency was due to reasonable cause and not due to

negligence." As noted supra, Taxpayer states that it changed banks and that the "electronic funds request" to "the Indiana Department of Revenue did not get changed accurately." Thus inattention in the changing of banks led to Taxpayer's failure to timely remit payment. The Department finds that Taxpayer has failed to establish reasonable cause under [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest is denied.

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