

Letter of Findings: 04-20110038P
Sales Tax
For Tax Years 2007-2009

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ISSUE

I. Tax Administration–Negligence Penalties.

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

Taxpayer requests that the Department exercise its discretion to abate the ten-percent negligence penalties.

STATEMENT OF FACTS

Taxpayer operates used car dealerships in Indiana. After an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer owed additional sales and use taxes and assessed tax, interest, and negligence penalties for the 2007, 2008, and 2009 tax years. Taxpayer requests abatement of the penalties. Further facts will be supplied as required.

I. Tax Administration–Negligence Penalties.

DISCUSSION

Taxpayer protests the imposition of the ten-percent negligence penalties pursuant to IC § 6-8.1-10-2.1. Indiana Regulation [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

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.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#)(c) as follows:

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.

Taxpayer has provided sufficient information to establish that its failure to pay the deficiency in this instance was not due to Taxpayer's negligence, but was due to reasonable cause as required by [45 IAC 15-11-2](#)(c). While Taxpayer's current circumstances show that Taxpayer acted with reasonable cause, Taxpayer should be on notice that should these circumstances arise again, penalty waiver may not be warranted.

FINDING

Taxpayer's protest of the imposition of the penalty is sustained.

Posted: 09/28/2011 by Legislative Services Agency

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