

Letter of Findings: 04-20110189P
Sales Tax
For the Year 2010

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ISSUE

I. Tax Administration – Negligence Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

II. Tax Administration – Interest.

Authority: IC § 6-8.1-10-1.

Taxpayer protests the imposition of interest.

STATEMENT OF FACTS

Taxpayer, an out-of-state company, is doing business in Indiana and also sells merchandise to the State of Indiana. Beginning in early 2010, the Indiana Department of Revenue ("Department") determined that Taxpayer failed to properly collect and timely remit sales tax to the Department. The Department thus assessed Taxpayer additional sales tax, interest, and penalty. Taxpayer did not respond to the Department's assessments, and the assessment eventually went to a warrant collection stage.

In early 2011, Taxpayer discovered that the Auditor's Office of the State of Indiana, instead of paying Taxpayer for the State's purchases, had forwarded the payments it owed Taxpayer to the Department to satisfy Taxpayer's sales tax liabilities. In April 2011, Taxpayer, in writing, requested that the Department abate interest and penalty. A hearing was held. This Letter of Findings ensues. Additional information will be provided as necessary.

I. Tax Administration – Negligence Penalty.

DISCUSSION

Taxpayer requested that the Department abates the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

[45 IAC 15-11-2](#)(b) further states:

"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 Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, 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. 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.

Pursuant to IC § 6-8.1-5-1(d), a taxpayer "has forty-five (45) days from the date the notice is mailed, if the notice was mailed before January 1, 2011... to file a written protest. In this instance, Taxpayer did not timely protest. Thus, the Department must respectfully decline Taxpayer's request for abatement of penalty.

Even if Taxpayer's protest was timely, Taxpayer has not demonstrated that its failure to remit the sufficient amount of the sales tax was due to reasonable cause. At the hearing, Taxpayer stated that in late 2009 and early 2010 it changed the service provider concerning its sales tax filings. Taxpayer maintains that its previous service provider failed to transfer the new service provider adequate records. Because the new service provider did not have the proper information, the new service provider overstated the collection allowances, resulting in deficiencies in the sales tax remittances. Taxpayer also claimed it was not aware of those assessments because it has more than one address and, as a result, it did not receive those notices.

Upon reviewing the Department's records, the Department properly followed statutory procedure every step of the way in notifying Taxpayer of its failure of remitting correct amounts of sales tax. Taxpayer did not respond to the Department's notices. The previous service provider was Taxpayer's agent and the new service provider is also Taxpayer's agent which Taxpayer employed to ensure its compliance. Thus, Taxpayer, as the principal, is responsible for their failure of compliance.

Given the totality of the circumstances, in the absence of other supporting documentation, the Department is not able to agree that Taxpayer has demonstrated that its failure to pay tax or timely remit tax was due to reasonable cause and not due to negligence.

FINDING

Taxpayer's request for abatement of the negligence penalty is respectfully denied.

II. Tax Administration – Interest.

DISCUSSION

The Department assessed interest on the tax liabilities. Taxpayer requested that the Department waive interest.

IC § 6-8.1-10-1(a) provides, as follows:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

Pursuant to IC § 6-8.1-10-1(e), the Department does not have the authority to waive the interest.

FINDING

Taxpayer's request for abatement of interest is respectfully denied.

SUMMARY

For the reasons discussed above, Taxpayer's request for abatement of interest and penalty is respectfully denied.

Posted: 09/28/2011 by Legislative Services Agency

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