

Letter of Findings Number: 04-20110197P
Sales Tax
For Tax Years 2007-09

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ISSUE

I. Tax Administration–Negligence Penalty.

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

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state corporation with operations in Indiana. The Indiana Department of Revenue ("Department") issued proposed assessments for sales tax, ten percent negligence penalties, and interest for the tax years 2007, 2008, and 2009. Taxpayer filed a protest and provided supplemental documentation supporting that protest. The Department conducted a supplemental audit and made several adjustments based on the protest and documentation. The Department sent new reduced bills after the supplemental audit. Taxpayer remitted an amount equal to the base tax and interest, but protested the imposition of ten percent negligence penalties. Taxpayer called the Hearing Officer prior to the scheduled hearing and requested an expedited hearing and Letter of Findings. This Letter of Findings was written based on that telephone conversation and on the facts found in the protest file. Further facts will be presented as required.

I. Tax Administration–Negligence Penalty.

DISCUSSION

The Department issued proposed assessments for sales tax, interest, and the ten percent negligence penalties for each tax year in question. Taxpayer protests the imposition of penalties and requests a waiver of those penalties. Taxpayer states that it had significant personnel turnover during the tax period and that it had recovered much of the documentation which was unavailable at the time of the audit. The documentation supported Taxpayer's protest and the base tax, interest, and penalties were significantly reduced. Taxpayer believes that these factors establish grounds for waiver of the ten percent penalties.

The Department refers to IC § 6-8.1-10-2.1, which states in relevant part:

If a person:

...

(4) fails to timely remit any tax held in trust for the state;

...

the person is subject to a penalty.

...

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

....

(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2\(b\)](#), which 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.

Finally, [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

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.

In this case, Taxpayer incurred deficiencies which the Department determined were due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to penalties under IC § 6-8.1-10-2.1(a)(4). A review of the Department's

records shows that this was the first sales tax audit for Taxpayer. Further, Taxpayer has provided significant supporting documentation in the protest process, resulting in a significant reduction of the liabilities at issue, and has taken steps to resolve its personnel turnover and record retention issues. Taxpayer has affirmatively established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest is sustained.

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