

**Letter of Findings Number: 04-20110266P  
Sales Tax - Penalty  
For the Period March 2011**

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**ISSUE**

**I. Tax Administration–Penalty.**

**Authority:** IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; IC § 6-8.1-6-3; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer had a sales tax payment for March 2011 that had a due date of April 20, 2011. On April 21, 2011, the Department received a sales tax payment from Taxpayer. A proposed assessment, including a ten percent penalty and interest, was issued by the Department. Taxpayer protested the penalty. An administrative hearing was held, and this Letter of Findings results. More facts will be provided below as needed.

**I. Tax Administration–Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to timely remit sales tax to the Department. The Department also notes that under IC § 6-8.1-10-1(e) interest cannot be waived.

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 in relevant part:

(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.

IC § 6-8.1-6-3 states:

(a) A document, including a form, a return, a payment, or a writing of any type, which must be filed with the department by a prescribed date, is considered filed:

- (1) in cases where it is mailed through the United States mail, on the date displayed on the post office cancellation mark stamped on the document's wrapper;
- (2) in cases where it is delivered to the department in any manner other than through the United States mail, on the date on which the department physically receives the document; or
- (3) in cases where a payment is made by an electronic fund transfer, on the date the taxpayer issues the payment order for the electronic fund transfer.

(b) If a document is sent through the United States mail by registered mail, certified mail, or certificate of mailing, then the date of the registration, certification, or certificate, as evidenced by any record authenticated by the United States Post Office, is considered the postmark date.

(c) If a document is mailed to the department through the United States mail and is physically received after

the appropriate due date without a legible correct postmark, the person who mailed the document will be considered to have filed the document on or before the due date if the person can show by reasonable evidence to the department that the document was deposited in the United States mail on or before the due date.

(d) If a document is mailed to, but not received by, the department, the person who mailed the document will be considered to have filed the document on or before the due date if the person can show by reasonable evidence to the department that the document was deposited in the United States mail on or before the due date and if the person files with the department a duplicate document within thirty (30) days after the date the department sends notice that the document was not received.

(Emphasis added).

Taxpayer, in correspondence to the Department, argues it was under the impression that electronic payments made after 4:00 P.M. posted the next day. Taxpayer states that it later telephoned and found out that the Department does "accept payment up until midnight on the due date."

Taxpayer's payment on April 21, 2011, was one day late and as a result the collection allowance was disallowed. The Department again notes that Taxpayer was only one day late, and that Taxpayer has not had recent late sales tax payments to the Department. Based upon Taxpayer's argument and information, the Department finds that Taxpayer has established it exercised ordinary business care and prudence under [45 IAC 15-11-2\(c\)](#), thus the penalty is waived. However, since the collection allowance was disallowed the Department notes that Taxpayer has a small amount of base tax still due (and also that any interest that has accrued cannot be waived).

#### **FINDING**

Taxpayer's protest of the penalty is sustained.

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