

Letter of Findings Number: 04-20100479P
Sales and Use Tax
Tax Years: 2004-2006

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ISSUE

I. Tax Administration – Ten Percent Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 2.2-8-12](#); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

Taxpayer is a New York corporation that distributes healthcare services and products. Taxpayer was assessed use tax as a result of a sales and use tax audit of the 2004, 2005, and 2006 tax years. The audit determined that Taxpayer owed use tax on many of its purchases and sales tax on many of its sales during the tax years in question. Taxpayer was also assessed penalty and interest. Taxpayer protested the assessments, after which Taxpayer provided the Department with additional documentation, and a supplemental audit was conducted. Taxpayer was satisfied with readjustments made to the base taxes assessed, but still protests the assessment of a penalty. Taxpayer did not request a hearing. The Letter of Findings was written based on the materials in the file.

I. Tax Administration – Ten Percent Negligence Penalty.

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty, requesting that it be waived.

Taxpayer protests the imposition of the ten percent negligence penalty, assessed pursuant to IC § 6-8.1-10-2.1. A negligence penalty was apparently assessed for a number of reasons, including the failure to keep or produce exemption certificates for purportedly exempt sales. (See [45 IAC 2.2-8-12](#)). 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.

[45 IAC 15-11-2\(c\)](#) provides that:

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.

In this case, Taxpayer incurred a deficiency which the Department determined was due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to a penalty under IC § 6-8.1-10-2.1(a).

Taxpayer argues that reasonable cause exists, maintaining that its failure to pay sales and use tax was not done with intentional disregard of Indiana's tax laws. Taxpayer also maintains that it has historically and consistently filed its Indiana sales and use tax returns in a timely manner. However, Taxpayer has not sufficiently 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\(c\)](#). Therefore, the negligence penalty shall not be waived.

FINDING

Taxpayer's protest is respectfully denied.

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