

**Letter of Findings Number: 04-20110129**  
**Sales Tax**  
**For the Years 2008-2009**

**NOTICE:** Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Sales Tax—Exemptions.**

**Authority:** IC § 6-2.5-8-8; IC § 6-8.1-5-1.

Taxpayer protests the Department's assessment of sales tax on sales to one customer.

**II. Tax Administration—Negligence Penalty.**

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

Taxpayer protests the imposition of the ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is a corporation doing business in Indiana. Taxpayer operates a trucking company. Taxpayer also does repair work for itself and other entities. The Indiana Department of Revenue ("Department") audited Taxpayer and determined that it sold repair parts to customers without charging Indiana sales tax and without receiving exemption certificates. As a result, the Department assessed additional sales tax (along with use tax on one item), interest, and penalty. Taxpayer protested the assessment related to one individual and penalty on the assessment. The Department conducted an administrative hearing and this Letter of Findings results. Additional facts will be supplied as necessary.

**I. Sales Tax—Exemptions.**

**DISCUSSION**

Taxpayer protests the assessment of additional sales tax on items sold to one customer.

Under IC § 6-8.1-5-1(c):

If the person has a surety bond guaranteeing payment of the tax for which the proposed assessment is made, the department shall furnish a copy of the proposed assessment to the surety. The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

At the time of the audit, Taxpayer was unable to produce an exemption certificate from the customer in question. After the audit was completed, Taxpayer provided the relevant exemption certificate. As a result of providing a properly completed exemption certificate in the form and manner prescribed by the Department, Taxpayer was not required to collect sales tax at the time of the sale pursuant to IC § 6-2.5-8-8(a). Thus, Taxpayer's protest of sales tax on sales to this particular customer is sustained.

**FINDING**

Taxpayer's protest is sustained.

**II. Tax Administration—Negligence Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of the ten percent negligence penalty on the sales and use tax imposed as a result of the Department's audit.

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:

(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.

Though the Department assessed Taxpayer with additional sales and use tax, Taxpayer provided sufficient information regarding Taxpayer's attempted compliance with Indiana sales and use tax laws to justify penalty waiver in this case. However, Taxpayer is reminded that if issues similar to those raised in the Department's audit occur again, the Department may not be willing to grant penalty waiver.

#### **FINDING**

Taxpayer's protest is sustained.

#### **SUMMARY**

Taxpayer's protest is sustained on sales to one customer. Taxpayer's protest of the penalty is sustained.

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