

**Letter of Findings: 40-20110379P  
Utility Receipts Tax  
For the Year 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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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 the document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Tax Administration – Failure to File Quarterly Estimated Payment Penalty.**

**Authority:** IC § 6-2.3-6-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of penalties for failure to file quarterly utility receipts tax returns.

**STATEMENT OF FACTS**

Taxpayer is a limited liability company with operations in Indiana. The Indiana Department of Revenue determined that Taxpayer had failed to file quarterly returns with estimated payments for utility receipts tax ("URT") for 2009. Taxpayer did file an annual return and included payment for the entire year at that point. The Department imposed penalty for failure to file the quarterly returns. Taxpayer protests that it had been informed by a third party that Indiana had changed to an annual reporting system for URT and that it has now adjusted its reporting system to the appropriate quarterly method. Also, Taxpayer points out that when it did file the yearly return, it included all URT due and that there is no assessment for any unpaid URT. Taxpayer also refers to its prior and subsequent compliance record in support of its position that it has been a responsible taxpayer. Therefore, Taxpayer believes that it has acted reasonably and requests a waiver of the penalty in question.

IC § 6-2.3-6-1 states:

- (a) Except as provided in subsections (c) through (e), a taxpayer shall file utility receipts tax returns with, and pay the taxpayer's utility receipts tax liability to, the department by the due date of the estimated return. A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated utility receipts tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year which does not end on December 31, the due dates for filing estimated utility receipts tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year.
- (b) With each return filed, with each payment by cashier's check, certified check, or money order delivered in person or by overnight courier, and with each electronic funds transfer made, a taxpayer shall pay to the department twenty-five percent (25[percent]) of the estimated or the exact amount of utility receipts tax that is due.
- (c) If a taxpayer's estimated annual utility receipts tax liability does not exceed two thousand five hundred dollars (\$2,500) the taxpayer is not required to file an estimated utility receipts tax return.

(d) If the department determines that a taxpayer's:

- (1) estimated quarterly utility receipts tax liability for the current year; or
- (2) average estimated quarterly utility receipts tax liability for the preceding year; exceeds five thousand dollars (\$5,000), the taxpayer shall pay the estimated utility receipts taxes due by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.
- (e) If a taxpayer's utility receipts tax payment is made by electronic funds transfer, the taxpayer is not required to file an estimated utility receipts tax return.
- (f) The penalty prescribed by [IC 6-8.1-10-2.1](#)(b) shall be assessed by the department on taxpayers failing to make payments as required in subsection (b) or (d). However, a penalty may not be assessed as to any estimated payments of utility receipts tax that equal or exceed:

- (1) twenty percent (20[percent]) of the final tax liability for the taxable year; or
- (2) twenty-five percent (25[percent]) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall be assessed only on the difference between the actual amount paid by the taxpayer on the estimated return and twenty-five percent (25[percent]) of the taxpayers's [ sic] final utility receipts tax liability for the taxable year.  
(Emphasis added).

Since IC § 6-2.3-6-1(f) refers to IC § 6-8.1-10-2.1(b) regarding the imposition of penalty, it is important to review that statute.

(a) If a person:

- (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;

the person is subject to a penalty.

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10[percent]) of:

(1) the full amount of the tax due if the person failed to file the return;

(2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;

(3) the amount of the tax held in trust that is not timely remitted;

(4) the amount of deficiency as finally determined by the department; or

(5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

(c) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.

(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.

(e) A person who wishes to avoid the penalty imposed under this section must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.

(f) The department shall adopt rules under [IC 4-22-2](#) to prescribe the circumstances that constitute reasonable cause and negligence for purposes of this section. ....

(Emphasis added).

Also, [45 IAC 15-11-2\(b\)](#) provides:

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\(c\)](#) states 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.

The Department imposed the penalty in question under IC § 6-2.3-6-1(f). IC § 6-2.3-6-1(f) refers to [IC 6-8.1-10-2.1\(b\)](#) for the imposition of penalty. Since IC § 6-8.1-10-2.1(d) allows waiver of penalty imposed under IC § 6-8.1-10-2.1, waiver of the penalty is allowed if the taxpayer in question 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. In this case, Taxpayer showed a good history of compliance along with the fact that it remitted the full amount of URT due with its annual return. Therefore, Taxpayer has shown reasonable cause as required by [45 IAC 15-11-2\(c\)](#). However, the Department takes this opportunity to remind Taxpayer that it is now aware of its filing responsibilities and any subsequent failure to comply with those requirements is unlikely to be considered reasonable.

## FINDING

Taxpayer's protest is sustained.

Posted: 12/28/2011 by Legislative Services Agency

An [html](#) version of this document.