

**Letter of Findings Number: 04-20120480P
Negligence Penalty
For the Periods February through May 2012**

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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 the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state leasing and IT acquisition company with a customer base that ranges from the Fortune 1000 to venture capital-backed startup companies. Taxpayer does business in Indiana and has filed annual Indiana sales tax returns since 2010.

Taxpayer was notified by the Indiana Department of Revenue ("Department") of a change in its filing status from annual to monthly in a letter from the Department mailed on December 20, 2011. The Department did not receive Taxpayer's monthly sales tax payments for the periods January through May 2012. The Department issued Taxpayer "best information available" assessments of sales tax and penalty for those periods. The Department abated the penalty for the first period, January 2012. Taxpayer protested the imposition of the ten percent negligence penalty on each of the remaining periods. Taxpayer requested that the Department's final determination be made based on the information in its file. Further facts will be supplied as required.

I. Tax Administration – Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the negligence penalty assessed for late filing of sales tax returns.

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.

Taxpayer states that it had no intent to disregard, nor willfully neglect, the laws of Indiana regarding its sales and use tax obligations. Taxpayer points out that it only received notice of its change in filing frequency from the Department on June 11, 2012. Taxpayer states that it never received the letter from the Department notifying Taxpayer of a change in its required filing frequency which was sent to Taxpayer on December 20, 2011.

Taxpayer states that upon receipt of the June 11, 2012, notice, it filed the missing returns for January through May on July 3, 2012, and made payments to the Department. Taxpayer also pointed to the fact it has not been penalized for non-payment of tax in prior years, nor has it previously requested waiver of taxes.

Indiana law requires Taxpayer to demonstrate that it had reasonable cause for not paying the full amount of

sales or use tax due. In order to establish reasonable cause, Taxpayer must demonstrate that it exercised "ordinary business care and prudence" in conducting the duties from which the additional tax and penalty arose. [45 IAC 15-11-2\(c\)](#).

The Department has no record that the December 20, 2012, letter it sent to Taxpayer as notification of its status change was returned to the Department as undeliverable mail. The address to which the December 20 letter was mailed is the same address as all the other correspondence sent to and received by Taxpayer. The Department did abate the penalty on the January 2012 period presumably in recognition of the short time span between the December 20, 2011, notification date and the January/February deadline for filing for the January 2012 period.

The Department finds that Taxpayer has not made an affirmative showing of reasonable cause for not remitting sales tax for the periods February to May 2012.

FINDING

Taxpayer's protest is respectfully denied.

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