

**Letter of Findings: 04-20120582**  
**Gross Retail Tax**  
**For the Year 2012**

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**ISSUE**

**I. Late Penalty – Gross Retail.**

**Authority:** IC § 6-8.1-5-1(c); IC § 6-8.1-10-2.1(a)(2); IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer argues that it is entitled to an abatement of a ten-percent penalty.

**STATEMENT OF FACTS**

Taxpayer is an Indiana business. Taxpayer filed two sales ("Gross Retail") tax returns late. Taxpayer subsequently paid the amount of tax due. The Department of Revenue ("Department") imposed a ten-percent late penalty. Taxpayer disagreed with the Department's decision imposing the penalty and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

**I. Late Penalty – Gross Retail.**

**DISCUSSION**

Taxpayer failed to timely file two monthly sales tax returns during 2012. The amount of tax due was paid, but Taxpayer challenges the imposition of the ten-percent late penalty.

IC § 6-8.1-10-2.1(a)(2) requires a ten-percent penalty if the taxpayer "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." Since the estimated payment was untimely, the Department assessed the penalty.

However, Taxpayer asks that the Department exercise its authority to abate the penalty.

Under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment – including the late-payment penalty – is presumptively valid.

Indiana law contains a provision allowing for abatement of penalty. IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to... pay the full amount of tax shown on the person's return... or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty."

Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that 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...."

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

Taxpayer explains that the employee responsible for timely filing the sales tax returns was seriously ill, that the employee was permitted to work from home for five months while undergoing medical treatment, and that the oversight in filing the returns was corrected promptly once the employee returned to work on a full time basis. Taxpayer also points out that in the past it has "been very prudent about paying all taxes in the past and will continue to do so in the future."

Taxpayer's payments were undisputedly late. Taxpayer is a long-standing business fully capable of determining its state tax liabilities and filing and paying the trust taxes it owes as an agent for the state. However, in this case there is insufficient information to establish that Taxpayer's decisions were so egregious as to constitute "willful neglect." Based on a "case-by-case" analysis and after reviewing "the facts and circumstances of each taxpayer" the Department agrees that the ten-percent penalty should be abated.

**FINDING**

Taxpayer's protest is sustained.

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