

**Letter of Findings Number: 04-20130531P**  
**Tax Administration**  
**For Tax Years 2011 and 2012**

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**ISSUE**

**I. Tax Administration—Penalty.**

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

Taxpayer protests the imposition of a ten percent penalty.

**STATEMENT OF FACTS**

Taxpayer is an Indiana service company. The Indiana Department of Revenue ("Department") determined that Taxpayer had not timely remitted sales and use taxes for the tax years 2011 and 2012. The Department issued proposed assessments for base tax, a ten percent negligence penalty, and interest. Taxpayer protested the imposition of the penalties. Taxpayer was informed of its right to have an administrative hearing. However, Taxpayer requested that the Department make a decision based solely on the information contained in the file without holding an administrative hearing. No administrative hearing was held, and the following letter of findings based solely on the information contained in the file results. Further facts will be supplied as required.

**I. Tax Administration—Penalty.**

**DISCUSSION**

The Department issued proposed assessments for base sales and use taxes, penalties, and interest for the tax years 2011 and 2012. Taxpayer protested the imposition of the penalties. The Department will determine whether the penalties imposed shall be waived.

A taxpayer who receives a proposed assessment after an audit "is subject to a penalty." IC § 6-8.1-10-2.1(a). The Department shall waive the penalty if the taxpayer demonstrates that the failure to pay the outstanding taxes "was due to reasonable cause and not due to willful neglect." IC § 6-8.1-10-2.1(d); see also [45 IAC 15-11-2](#). The taxpayer may demonstrate reasonable cause by showing affirmatively that it used "ordinary business care and prudence" in not paying the outstanding taxes. However, the taxpayer's ignorance of Indiana's tax laws does not constitute reasonable cause. Whether a taxpayer demonstrates reasonable cause for penalty purposes is a fact-sensitive question and determined on a case-by-case basis. [45 IAC 15-11-2](#)(b) and (c).

In this case, although Taxpayer has taken steps to ensure that all sales and use taxes will be paid in the future, it has not affirmatively shown facts demonstrating that it had a reasonable cause for its failure to pay the proper amount of sales and use taxes in 2011 and 2012. Consequently the penalties imposed for the tax years 2011 and 2012 are not waived.

**FINDING**

Taxpayer's protest is denied.

*Posted: 12/25/2013 by Legislative Services Agency*

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