

Letter of Findings Number: 04-20130307P
Tax Administration
For Tax Years 2010 - 2012

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ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent negligence penalty and the assessment of interest.

STATEMENT OF FACTS

Taxpayer is a fire protection contractor. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer for the years 2010 through 2012. As a result of that audit, the Department issued proposed assessments for the years at issue. Those proposed assessments also included penalty and interest. Taxpayer protested the imposition of a negligence penalty. An administrative hearing was conducted and this Letter of Findings results. Further facts will be supplied as required.

I. Tax Administration–Negligence Penalty.

DISCUSSION

At the outset, the Department notes that under IC § 6-8.1-5-1(c) "[T]he burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

In its protest letter, Taxpayer states that it "protests the penalties on these notices." Taxpayer states:

We did not intentionally fail to pay use tax on the items that are noted in this assessment. Since we fabricate our own material for the fire suppression systems we install, we took into account that these items were used in the manufacturing of the system. Going forward since the audit has taken place and the auditor explained the guidelines in determining use tax on these manufacturing items, [Taxpayer] is now paying the use tax on these items. Furthermore, we did not understand that phone support for our software program is taxable. We were also unaware that the vendor that we purchased our equipment from was not including sales tax on the invoices. The price we paid was supposed to be all inclusive.

The negligence penalty was imposed pursuant to IC § 6-8.1-10-2.1. The Department notes [45 IAC 15-11-2\(b\)](#), which states:

"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.

(Emphasis added).

And [45 IAC 15-11-2\(c\)](#) provides 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. 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 has been audited before by the Department. The current Audit Report notes that Taxpayer "does not have a use tax system in place for purchases of construction supplies." Taxpayer has failed to show reasonable cause under [45 IAC 15-11-2\(c\)](#), and is thus denied regarding its protest of the penalty.

FINDING

Taxpayer's protest is denied.

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