

Letter of Findings Number: 04-20130514P
Tax Administration
For Tax Years 2009 - 2011

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ISSUE

I. Tax Administration–Negligence Penalty and Interest.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-10-1; 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 operates a combination convenience store and gas station. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer for the years 2009 through 2011. 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 and interest. An administrative hearing was conducted and this Letter of Findings results. Further facts will be supplied as required.

I. Tax Administration–Negligence Penalty and Interest.

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 asks the Department to "consider removing the penalty and interest on the liability." The Department notes that interest, under IC § 6-8.1-10-1(e), cannot be waived. The negligence penalty was imposed pursuant to IC § 6-8.1-10-2.1.

Regarding the negligence penalty, [45 IAC 15-11-2\(b\)](#), 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's protest letter states in relevant part:

When I bought the business, I knew nothing as far as keeping the data for reporting and submitting the information in order to do the sales tax returns. The former owner showed me how he was doing it. So I started and continued to do it the same way not knowing it was incorrect.

[45 IAC 15-11-2\(b\)](#) notes, "Ignorance of the listed tax laws, rules and/or regulations is treated as negligence."

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 of the penalty and interest is denied.

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