

**Letter of Findings Number: 04-20140331P  
Tax Administration  
For Tax Year 2011 and 2012**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

**ISSUE**

**I. Tax Administration - Penalties.**

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

Taxpayer protests the imposition of penalties.

**STATEMENT OF FACTS**

Taxpayer is in the business of selling jewelry. The Indiana Department of Revenue ("Department") conducted an audit and found that Taxpayer failed to collect sales tax on sales to nonresidents, self-assess use tax on property given away, and self-assess use tax on certain invoices from nonresident vendors. The Department proposed assessments for base sales tax, use tax, penalties, and interest. Taxpayer protests the assessment of penalties. An administrative hearing was held, and this Letter of Findings results. Further facts will be supplied as required.

**I. Tax Administration - Penalties.**

**DISCUSSION**

The Department issued proposed assessments for base tax, penalties, and interest. Taxpayer protests the assessment of penalties.

A taxpayer who "incurs, upon examination by the department, a deficiency that is due to negligence . . . 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](#). A taxpayer may demonstrate reasonable cause by showing affirmatively that it used "ordinary business care and prudence" in failing to pay the deficiency. 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).

As a result of the protest process, Taxpayer has affirmatively established that it acted reasonably in its efforts to comply with Indiana's tax filing and payment requirements, as required by [45 IAC 15-11-2](#)(c). The penalty will be waived. However, the Department takes this opportunity to notify Taxpayer that it is now aware of its sales tax obligations and that penalties shall be imposed if this scenario occurs again.

**FINDING**

Taxpayer's protest of the penalties is sustained.

*Posted: 10/29/2014 by Legislative Services Agency*  
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