

**Letter of Findings: 04-20140396P**  
**Gross Retail and Use Tax**  
**For the Years 2010, 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

**ISSUE**

**I. Gross Retail and Use Tax - Negligence Penalty.**

**Authority:** IC § 6-8.1-5-1(c); IC § 6-8.1-10-2.1(a)(3); 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 asks the Department to exercise its discretion and abate a ten-percent negligence assessed at the conclusion of the Department's sales and use tax audit.

**STATEMENT FACTS**

Taxpayer is an Indiana automobile dealership which sells new and used cars. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer's business records and tax returns. The audit resulted in the assessment of additional sales and use tax. Taxpayer agreed with the tax assessment but disagreed with the assessment of a penalty. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

**I. Gross Retail and Use Tax - Negligence Penalty.**

**DISCUSSION**

The Department's assessment of additional tax was accompanied by a ten-percent negligence penalty. Taxpayer disagrees on the ground that it was the Taxpayer's "intention to obey all the laws that impose a requirement obligation upon the entity."

IC § 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. 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."

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\(b\)](#) 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.

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 . . . ."

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 negligence penalty - is presumptively valid.

Taxpayer was assessed additional tax on capital purchase items used in remodeling its facility. In addition Taxpayer was assessed additional tax on items related to race car activities. Given the totality of the circumstances, the Department agrees that Taxpayer "exercised ordinary business care" and that its initial failure to self-assess the use tax or pay the sales tax at issue was due to "reasonable cause." Taxpayer has met its

statutory responsibility under IC § 6-8.1-5-1(c) of demonstrating that the assessment of the ten-percent negligence penalty was incorrect and that the penalty should be abated.

**FINDING**

Taxpayer's protest is sustained.

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

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