

Letter of Findings: 04-20160262P
Indiana Sales/Use Tax
For the Years 2011, 2012, and 2013

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document to 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Negligence penalty was properly assessed as a result of a sales and use tax audit because Corporation substantially under accrued use tax and had a history of noncompliance with the Department.

ISSUE

I. Tax Administration - Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; IC § 6-8.1-5-1; Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 15-11-2](#).

Taxpayer requests that the Department abate the negligence penalty.

STATEMENT OF FACTS

Taxpayer is doing business in Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer concerning sales and use tax for tax years 2011 through 2013. As a result, Taxpayer was assessed with additional use tax and negligence penalty.

Taxpayer paid the liability including penalty. Taxpayer protested the penalty and requested that the Department abate the negligence penalty. A hearing was held and this Letter of Findings results. Additional facts will be provided as necessary.

I. Tax Administration - Negligence Penalty.

DISCUSSION

The Department imposed a ten percent negligence penalty because Taxpayer significantly under accrued its use tax liability for the tax years under audit. Given the size and sophistication of the Taxpayer, the Department deemed this under accrual as negligent.

Taxpayer argues that it should not be subject to the penalty and requests an abatement.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) 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;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department[.]

[45 IAC 15-11-2](#)(b) further 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.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), as follows:

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.

As the result of an audit, the Department assessed Taxpayer additional use tax for tax years 2011 through 2013. The Department levied a ten percent negligence penalty in addition to the use tax assessment. Taxpayer paid the assessment and penalty but argues that the penalty should be abated as Taxpayer believed it was in good standing with the Department and had timely filed all tax returns in the audit period. Further, Taxpayer argued that it has a system in place for remitting use tax to the Department and the audit assessment was small in comparison to the number of purchases made during the audit period. Finally, Taxpayer noted that this was their first sales and use tax audit and they are in the process of making internal changes to be in better compliance.

The Department assessed Taxpayer the ten percent negligence penalty given the substantial under accrual of use tax for the years at issue. Taxpayer is a large global organization with a system in place to accrue use tax and the professional staff and sophistication to implement that system. As such, the Department found the under accruals to be negligent. A review of Taxpayer's account with the Department, revealed that while Taxpayer is in balance with the Department, Taxpayer has a long history of demand notices and warrants issued against it in relation to its tax liabilities. Therefore, the negligence penalty is justified.

FINDING

Taxpayer's protest is denied.

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