

Letter of Findings: 04-20160458P
Sales Tax
For the Year 2016

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. 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

Indiana Business established that its nine-day late remittance of its monthly sales tax was not "willful neglect," and the Department agreed that the ten-percent penalty should be abated.

ISSUE

I. Sales Tax - Late Payment Penalty.

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

Taxpayer argues the Department should exercise its discretion to abate a ten-percent late payment penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana business that collects and remits sales tax. Taxpayer employed the services of a third-party tax return preparer to prepare and file its sales tax returns, and another third-party payment provider to make the payments due on returns. The preparers have two returns and payments for Indiana set up in their systems: one is the standard monthly sales tax return that is due on the 20th day of the following month, the other is for the annual consolidated return. For the tax period at issue, an error occurred whereby the monthly payment for the March 2016 return was uploaded to the annual consolidated return portion of the system, which was not due until the end of the month. Thus, the monthly sales tax return itself was filed by the due date, but the corresponding payment was not made by the 20th of the month, and instead was paid nine days later. The Indiana Department of Revenue ("Department") issued a proposed ten-percent "late" penalty assessment and interest for the late payment.

Taxpayer disagreed with the assessment imposing the ten-percent "late" penalty. Taxpayer protested and asked that the Department abate the penalty, but does not dispute the interest assessed on the late payment. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Sales Tax - Late Payment Penalty.

DISCUSSION

The issue is whether Taxpayer is justified in asking that the Department abate a ten-percent late payment penalty. 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 late payment penalty - is presumptively valid.

Taxpayer timely filed its sales tax return, but failed to make the corresponding payment by the due date. As a result, the Department issued a proposed assessment. The penalty was assessed pursuant to IC § 6-8.1-10-2.1(a)(2) which imposes the penalty assessment if a 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."

However, 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 waive 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. [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"

Taxpayer attributes the late payment to a computer software program error. Taxpayer employed two reputable service providers to carry out its filing and payment obligations, and an error occurred whereby the payment for the monthly return was erroneously uploaded to the annual return account and not the monthly return account. Taxpayer's representative - the entity responsible for filing Taxpayer's returns - explained that this has never occurred before, and that Taxpayer discovered and corrected the error on their own without notification from the Department.

It is not disputed that the payment was untimely, but the Department agrees that the Taxpayer's performance of its responsibilities was not so egregious as to rise to the level of "willful neglect." An ordinary, reasonable taxpayer could be expected to delegate the duties of filing returns and remitting payment to a reputable third-party, and, in this instance, it does not appear that the error was caused by any actions taken by Taxpayer itself. Taxpayer also does not have a history of late payments with the Department. Based on a "case-by-case" analysis and after reviewing "the facts and circumstances of each taxpayer" the Department agrees that the ten-percent penalty should be abated.

FINDING

Taxpayer's protest is sustained.

Posted: 01/25/2017 by Legislative Services Agency
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