

**Letter of Findings: 04-20160641P
Negligence Penalty
For Tax Years 2013, 2014, 2015**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department agreed to abate, on a one-time basis, negligence penalty assessed on Business because Business had a good filing history.

ISSUE

I. Tax Administration - Negligence Penalty.

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

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer has one business location in Indiana. Taxpayer was filing annual sales and use tax returns with the Indiana Department of Revenue ("Department"). The Department conducted an audit of Taxpayer's business records for the years 2013, 2014, and 2015. The Department found that Taxpayer did not pay sales tax on some of its non-exempt purchases and subsequently failed to remit use tax on those same purchases. The Department assessed Taxpayer additional use tax, interest, and ten percent negligence penalties for those periods. Taxpayer protested the assessment of penalties. This final determination ensues. Further facts will be supplied as necessary.

I. Tax Administration - Negligence Penalty.

DISCUSSION

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "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.

(c) 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.

Indiana law requires Taxpayer to demonstrate that it had reasonable cause for not collecting and remitting the sales tax due. In order to establish reasonable cause, Taxpayer must demonstrate that it exercised "ordinary business care and prudence" in conducting the duties from which the additional tax and penalty arose. [45 IAC 15-11-2\(c\)](#).

The Department's audit found that Taxpayer had purchased truck repair parts, light bulbs, signs, calendars and other miscellaneous items without paying sales tax at the time of purchase, nor did Taxpayer subsequently remit use tax on these non-exempt items. Taxpayer does not protest the tax assessment or the interest (and, as a matter of fact, paid that portion of the assessment), but Taxpayer asks the Department to abate the penalties because it has a good compliance history and because it will remit use tax going forward with a monthly estimated use tax payment that it hopes will account for its future use tax liabilities. Taxpayer is placed on notice that it must remit use tax in compliance with IC § 6-2.5-3-2 and [45 IAC 2.2-3-4](#) for each non-exempt item of tangible personal property used, stored, or consumed in Indiana where sales tax had not been paid at the time of purchase in a retail transaction.

Given Taxpayer's good filing history in the last five to eight years, and on a one-time basis only, the Department is willing to abate the penalty in this instance. Taxpayer is on notice that similar mistakes in the future will constitute negligence.

FINDING

Taxpayer's protest is sustained.

Posted: 02/22/2017 by Legislative Services Agency
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