

**Letter of Findings: 04-20160710
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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 is an Indiana business that files monthly sales and use tax returns with the Indiana Department of Revenue ("Department"). The Department conducted an audit of Taxpayer's business records. The Department found that Taxpayer had failed to collect sales tax on some of its sales. The Department assessed Taxpayer additional 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.

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\(c\)](#).

At the onset of the Department's audit, Taxpayer was able to retrieve some missing exemption certificates; however, some of Taxpayer's customers were no longer in business, so Taxpayer was unable to acquire exemption certificates from those customers. Also, some of the sales tax that Taxpayer collected at its Indiana locations was inadvertently remitted by Taxpayer to Kentucky instead of Indiana. Taxpayer does not contest that it owes the tax assessed and interest. Taxpayer asks the Department to abate the penalties because it did not willfully neglect to remit the tax, because Taxpayer had corrected its systems to avoid a recurrence of these issues, and because it has a good compliance history.

Not collecting exemption certificates at the time of a transaction and misdirecting sales tax that was collected in Indiana to another state do not reflect the exercise of "ordinary business care and prudence" and are the epitome of negligence. However, given Taxpayer's good filing history, 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.

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