

**Letter of Findings: 03-20160546P 04-20160547P**  
**Withholding Tax and Gross Retail Tax Administration**  
**For the Years 2014 and 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Soft Drink Manufacturer was entitled to an abatement of the ten-percent negligence penalty following the Department's sales and withholding audits; Soft Drink Manufacturer established "reasonable cause" for abating the penalty; there was nothing in the audit report which established that Soft Drink Manufacturer failed to exercise ordinary business care and prudence.

### ISSUE

#### I. Tax Administration - Negligence Penalty.

**Authority:** IC § 6-8.1-5-1(c); IC § 6-8.1-10-2.1(a)(2); IC § 6-8.1-10-2.1(a)(3); IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer argues that it is entitled to an abatement of the ten-percent negligence penalty assessed by the Department.

### STATEMENT OF FACTS

Taxpayer is an Indiana bottler and soft drink manufacturer. Taxpayer distributes its products and the products of other soft drink manufacturers by means of a fleet of trucks which Taxpayer owns.

The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records and tax returns. The audit resulted in an assessment of both sales/use tax and withholding tax.

Along with the tax assessments, the Department imposed a ten-percent negligence penalty. Taxpayer agreed with the tax assessments, paid the additional tax, and paid the associated interest charges. However, Taxpayer disagreed with the imposition of the penalty and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. This Letter of Findings results.

#### I. Tax Administration - Negligence Penalty.

### DISCUSSION

The issue is whether Taxpayer has met its burden of establishing that the negligence penalty should be abated.

Taxpayer states that it has "diligently paid the required taxes in the past" but admits that the audits "highlighted our unintentional misunderstanding of sales and use tax . . . in everyday business." Taxpayer further states that it has taken specific steps to assure that it complies with sales and use tax record-keeping requirements. Taxpayer explains that it will work to better "[m]aintain customer sales tax credit exemption forms" and that it will "[r]eview vendor sales and use tax payments to insure proper collection and payment."

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." (Emphasis added).

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.

The Department imposed additional sales/use tax because Taxpayer failed to pay sales tax or self-assess use tax on the purchase of cleaning supplies, storage equipment, a software maintenance agreement, and certain computer equipment.

The Department imposed additional withholding tax because Taxpayer had failed to withhold county income tax on behalf of "several Indiana residents and [a] Kentucky resident . . . ."

There is nothing in either of the audit reports (sales and withholding) which documents the "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." [45 IAC 15-11-2\(b\)](#).

Given the large number of routine sales transactions entered into by Taxpayer or the number of employees on whose behalf Taxpayer is required to withhold state and local income taxes, there is nothing in the audit reports which establishes that Taxpayer - although it clearly made mistakes - failed to "exercise[] ordinary business care and prudence . . . ." [45 IAC 15-11-2\(c\)](#).

There is insufficient information to establish that Taxpayer's actions were so serious as to constitute "willful neglect." IC § 6-8.1-10-2.1(d). Based on a "case-by-case" analysis and after reviewing "the facts and circumstances of each taxpayer," the Department agrees that the ten-percent negligence penalty should be abated.

## FINDING

Taxpayer's protest is sustained.

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