

**Final Order Denying Refund: 04-20160549R  
Gross Retail Tax Administration  
For the Year 2016**

**NOTICE:** IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

**HOLDING**

Given the fact that Indiana Truck Dealer had a history of previous penalties and filing errors and that Truck Dealer had not established policies and procedures to avoid such errors in the future, the Department was unable to agree that Truck Dealer established that it was entitled to a refund of the most recent late payment penalty amount.

**ISSUE**

**I. Tax Administration - Late Payment 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(d); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer argues that it is entitled to a refund of a late payment penalty previously imposed by the Department and paid by the Taxpayer.

**STATEMENT OF FACTS**

Taxpayer is in the business of selling and leasing trucks. Taxpayer also sells truck parts and provides truck services. Taxpayer files sales tax returns electronically and also pays the amount due electronically. Taxpayer filed its February 2016 sales tax return but failed to pay the amount due. Approximately eight days later, Taxpayer paid the amount of tax due. However, the Indiana Department of Revenue ("Department") imposed a \$3,366 ten-percent "late" payment penalty. Taxpayer paid the penalty.

Taxpayer submitted to the Department a Form GA-110L ("Claim for Refund") in which it sought a return of the \$3,366 penalty amount. The Department denied the refund in a letter dated July 2016. The letter stated that "Taxpayer failed to provide a valid reason to abate the penalty." Taxpayer disagreed with the Department's decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Final Order Denying Refund results.

**I. Tax Administration - Late Payment Penalty.**

**DISCUSSION**

Taxpayer argues that it is entitled to a refund of the late-payment penalty amount. Taxpayer explains that it has been in business for over 50 years, that the February payment was only "8 days late," and that the failure to pay the amount due was entirely attributable to "human error."

Indiana law, IC § 6-8.1-10-2.1(a)(2), requires a ten-percent penalty be imposed 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."

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 "late" penalty - is presumptively valid.

A review of Taxpayer's records indicates that it has a past history of approximately 30 late, mistaken, or erroneous payments of various state taxes or fees. Although the Department recognizes that Taxpayer paid the February 2016 tax relatively soon after the error was recognized, the Department cannot ignore the fact that this was not the first instance of such an error. In addition, Taxpayer has provided no indication that it has changed its policies and procedures such that it would avoid such errors in the future.

Based on a "case-by-case" analysis and after reviewing "the facts and circumstances of each taxpayer" the Department is unable to agree that the ten-percent negligence penalty should be abated and the amount be refunded.

### **FINDING**

Taxpayer's protest is respectfully denied.

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