

## DEPARTMENT OF STATE REVENUE

04-20160662.LOF

**Letter of Finding Number: 04-20160662**  
**Sales Tax**  
**For Tax Years 2013-15**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Sole proprietor did not establish that his failure to remit sales tax was due to reasonable cause and not due to negligence.

**ISSUE****I. Tax Administration- Negligence Penalty.**

**Authority:** IC § 6-2.5-2-1; IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 2.2-2-2](#); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is a sole proprietor that performs transactions involving marketing campaigns and various printed materials. Following a sales and use tax audit, the Indiana Department of Revenue ("Department") concluded that Taxpayer failed to properly remit sales tax collected on sold items for the tax years at issue. The Department issued a proposed assessment for sales tax, interest, and a negligence penalty. Taxpayer submitted a protest requesting a waiver of the penalty. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

**DISCUSSION****I. Tax Administration- Negligence Penalty.**

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Taxpayer protests the imposition of penalties pursuant to IC § 6-8.1-10-2.1. Penalty waiver is permitted if a taxpayer shows that failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

"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.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2\(c\)](#) as follows:

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.

The Department's audit report states, among other things, that Taxpayer was not registered with the Department for sales tax collection and remittance. Taxpayer collected sales tax but failed to remit the sales tax to the Department. IC § 6-2.5-2-1 creates the statutory duty to collect sales tax:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state. (Emphasis added).

[45 IAC 2.2-2-2](#) is also of relevance, stating:

The retail merchant, acting as an agent for the state of Indiana, must collect the tax. The tax is borne by the customer. Consideration is a necessary element of taxable transaction.

Taxpayer's protest letter states in part that he "had no training on taxes, accounting or many other skill sets needed to be a successful small business owner." Taxpayer also states that his accountant "seldom reminded [Taxpayer] that there were steps to take to be compliant [.]". Lastly, Taxpayer argues that "the process to have an Indiana tax ID issued" was unclear to him.

As noted above, Taxpayer collected Indiana sales tax on transactions but failed as an agent for the state of Indiana to remit that sales tax to the Department as required. Taxpayer was aware of his obligation to remit the sales tax, stating in his protest letter that he knew he "had to do something to rectify this situation" but that "it was just not clear to [Taxpayer] where to start."

After an analysis of the law and the applicable facts, the Department finds that Taxpayer has not demonstrated that he exercised ordinary business care and prudence. Taxpayer has thus failed to establish reasonable cause to waive the penalty.

## FINDING

Taxpayer's protest is denied.

*Posted: 08/30/2017 by Legislative Services Agency*  
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