

**Letter of Findings: 04-20170737**  
**Indiana Sales/Use Tax**  
**For the Years 2013, 2014, and 2015**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document to 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Negligence penalty was properly assessed as a result of a sales and use tax audit because Corporation has a responsibility to ensure its employees and accounting software record, collect, and remit sales tax properly.

### ISSUE

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

**Authority:** IC § 6-8.1-10-2.1; IC § 6-8.1-5-1; Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 15-11-2](#)

Taxpayer requests that the Department abate the negligence penalty.

### STATEMENT OF FACTS

Taxpayer is doing business in Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer concerning sales and use tax for tax years 2013 through 2015. As a result, Taxpayer was assessed with additional use tax and negligence penalty.

Taxpayer paid an amount equal to the liability and interest but not the associated penalty. Taxpayer protested the penalty and requested that the Department abate the negligence penalty. Taxpayer and the Department agreed that the parties would waive an administrative hearing and the Department would issue this Letter of Findings based on information previously submitted by Taxpayer. Additional facts will be provided as necessary.

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

### DISCUSSION

The Department imposed a ten percent negligence penalty because there were "a significant number of errors in [Taxpayer's] record keeping . . ." Taxpayer argues that the errors were "due to employee failure to follow company policies and systems failure." Taxpayer asks that the penalty be abated.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) 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;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department[.]

[45 IAC 15-11-2](#)(b) further states:

"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 Department may waive a negligence penalty as provided in [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.

As the result of an audit, the Department assessed Taxpayer additional use tax for tax years 2013 through 2015. The Department levied a ten percent negligence penalty in addition to the use tax assessment. Taxpayer paid the assessment and interest but not the associated penalty. Taxpayer argues that the penalty should be abated as the assessments resulted from "employee failure to follow company policies and systems failure."

Taxpayer has five locations. During the tax years in question, Taxpayer's employees at one of the locations filed sales receipts for exempt diesel sales with credit card receipts that were only retained for six months. Therefore, Taxpayer could not prove that recorded sales were made to exempt customers. At another location, "neither sales receipts nor exemption certificates were available" as the employees at that location did not retain them. Additionally, Taxpayer claims that a portion of the assessment was due to "a misinterpretation of the reports issued by the [T]axpayer's accounting software." Taxpayer "changed software at the beginning of the audit period and the reports were difficult to understand." The error, Taxpayer claims "was more an interpretation problem and not intentional."

The audit noted that the penalty was applied because of the "significant number of errors in the [T]axpayer's record keeping and recording." While employees will make mistakes, it is Taxpayer's ultimate responsibility, as the retail merchant, to ensure that it is collecting and remitting sales tax according to Indiana law and that it is properly documenting those sales which are exempt from sales tax. Further, while the Department understands the difficulties encountered in using new software, it is a Taxpayer's responsibility to ensure that it is recording,

collecting and remitting sales tax properly. When it was discovered that the new accounting software generated confusing reports, Taxpayer had the duty to take whatever steps were necessary to ensure that sales tax was being recorded, collected and remitted properly. This was not done. Therefore, the negligence penalty is justified.

**FINDING**

Taxpayer's protest is denied.

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