

Letter of Findings: 04-20170594P
Tax Administration
For the Year 2013-2015

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Company failed to meet its burden of proof for penalty waiver.

ISSUE

I. Tax Administration–Penalty.

Authority: 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 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 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 Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a penalty.

STATEMENT OF FACTS

Taxpayer is a truck repair and maintenance company. Taxpayer was audited for the years 2013 through 2015 for Indiana sales and use tax. As a result of the audit, the Department issued proposed assessments for base tax, penalty, and interest. Taxpayer filed a protest regarding the penalty. A telephone hearing was held and this Letter of Findings results. More facts will be provided below as needed.

I. Tax Administration–Penalty.

DISCUSSION

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment 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). When an agency is charged with enforcing a statute, the courts defer to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Taxpayer protests the imposition of the ten percent negligence penalty. In a letter to the Department, Taxpayer states the following in part:

We always file and pay our monthly sales tax returns timely, and make every effort to properly assess use tax as necessary, as is evidenced by the large number of transactions we assess use tax. Further, the majority of our findings were the result of two types of transactions that increased dramatically in volume, and had not been an issue during prior audits.

Taxpayer also states:

[W]e have a couple of credit cards at corporate where some corporate employees were purchasing items with the credit card and these invoices were not being reviewed to ensure use tax was assessed in all situations if sales tax was not charged. These corporate cards had not been as active in years past but their volume increased over time, due to merchants such as [online companies], which make purchasing products online much easier. As a result of this audit, we have now updated our processes to ensure these transactions are reviewed as well, so use tax can be assessed as necessary.

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 in relevant part:

(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.

Taxpayer has been audited on two other occasions by the Department. Taxpayer states that it now has a person to review invoices to make sure use tax is self-assessed, and that it has substantially grown during the period at issue. Taxpayer's argument does not address why Taxpayer did not have a person reviewing invoices during the period at issue. As noted, this is not Taxpayer's first audit by the Department. The audit report states that the sample period found various items where use tax was not accrued. Additionally, the audit found that Taxpayer "purchased items without proper documentation throughout the sample period." The Department finds that Taxpayer has not established it exercised ordinary business care and prudence under [45 IAC 15-11-2\(c\)](#). Taxpayer has not met its burden of proof under IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest of the penalty is denied.

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