

Letter of Findings: 04-20190147P
Sales Tax
For The Tax Period September 2018

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Business provided sufficient documentation and analysis to support its position that it had acted in a reasonable manner regarding its tax duties. Therefore, penalty will be waived. The Department is not permitted to waive interest.

ISSUE

I. Tax Administration—Penalty and interest.

Authority: IC § 6-2.5-2-1; IC § 6-8.1-10-2.1; *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*, 897 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

Taxpayer is a retail merchant operating in Indiana. For the month of September 2018, Taxpayer's third-party tax processing services ("Service") failed to timely remit sales tax which Taxpayer had collected from its customers. Ten days after the due date, Taxpayer checked with Service to inquire about the status of the payment. At that point, Service made the payment. When the payment was submitted, the Indiana Department of Revenue ("Department") imposed penalty and interest on the late payment. Taxpayer protested the imposition of penalty and interest. Taxpayer opted for the Department to make its written decision based on the materials it sent in with its protest. Therefore, no administrative hearing was held. This Letter of Findings is written based on the materials in the protest file. Further facts will be supplied as required.

I. Tax Administration—Penalty and interest.

DISCUSSION

Taxpayer protests the imposition of penalty and interest associated with the late payment of its September 2018 sales tax payment. The Department notes that, under IC § 6-8.1-10-1(e), it is not permitted to waive interest. Regarding penalty, the Department imposed penalty on the basis that Taxpayer collected sales tax from its customers but did not remit that tax to the Department by the due date. Taxpayer protests that it employs Service to administer its tax obligations, including remitting sales tax to the Department. Further, Taxpayer states that it realized that the amount of sales tax due had not been withdrawn from its bank account as expected if the payment had been made and that it did not wait for the Department to take action. Taxpayer believes that it acted in a reasonable manner and that waiver of penalty is appropriate.

As a threshold issue, it is the Taxpayers' 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 [D]epartment'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*, 897 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 shall be entitled to deference.

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (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).

Therefore, retail merchants are required to collect sales tax on retail transactions, unless the transaction is exempt from sales tax.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a 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.
- (Emphasis added).

[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 when a taxpayer establishes that its failure to pay a tax was due to reasonable cause and not due to negligence. [45 IAC 15-11-2](#)(c). The taxpayer must demonstrate that it exercised ordinary business care in carrying out or failing to carry out a duty giving rise to the penalty. Reasonable cause is fact sensitive and will vary based on the facts of each individual case.

In this instance, Taxpayer has demonstrated that its actions were reasonable as described in [45 IAC 15-11-2](#)(c). While Service did not timely remit sales tax on Taxpayer's behalf, Taxpayer quickly took actions to remedy the situation prior to Departmental action. Since this is the first instance where sales tax was not timely remitted, and since Taxpayer addressed the problem without prompting from the Department, the Department agrees that penalty may be waived in this case. As explained above, interest may not be waived.

FINDING

Taxpayer's protest of the negligence penalty is sustained. Taxpayer's protest of the imposition of interest is denied.

March 28, 2019

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