

**Letter of Findings: 04-20191471**  
**Sales & Use Tax**  
**For The Tax Year 2016**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual was required to pay the base sales tax and interest after failing to pay taxes on the acquisition of a vehicle. However, Individual was granted waiver for the imposed penalty.

**ISSUE**

**I. Tax Administration - Penalty and Interest.**

**Authority:** IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the Department's imposition of penalty and interest.

**STATEMENT OF FACTS**

Taxpayer is an individual Indiana resident. In 2016, at the time of his retirement, his former employer gave him a car. After review of BMV records and other publicly available information, the Indiana Department of Revenue ("Department") assessed sales tax, negligence penalty, and interest for the purchase of the vehicle based on fair market value. Taxpayer protests the imposition of penalty and interest but concedes to pay the sales tax on the vehicle. Additional facts will be provided as necessary.

**I. Tax Administration - Penalty and Interest.**

**DISCUSSION**

Taxpayer protests that he was unaware that he would be liable for paying sales tax on the arm's length value of the car that his former employer gave to him. Taxpayer believes that this warrants waiver of penalty and interest. The Department is authorized to impose a ten percent penalty for failure to timely file a required return and/or remit tax payment. IC § 6-8.1-10-2.1. 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(d). 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.

After review of its records, the Department finds that Taxpayer does not have any outstanding liabilities or history of noncompliance. In the instant matter, Taxpayer provided sufficient documentation and analysis to support a waiver of the penalty.

Additionally, Taxpayer protests the Department's imposition of interest on his tax liability. For taxes unpaid by the due date for payment, IC § 6-8.1-10-1(b) provides for the imposition of interest. IC § 6-8.1-10-1(e) further explains that the Department is not permitted to waive interest.

Therefore, the Department will waive penalty, but Taxpayer must pay sales tax and interest. However, should the issue rise again an imposition of penalty may be warranted.

#### **FINDING**

Taxpayer is sustained in part and denied in part.

December 9, 2019

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