

**Letter of Findings: 04-20200046
Sales and Use Tax
For the Tax Year 2019**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Corporation failed to timely file its 2018 Indiana tax returns. Therefore, penalty and interest were properly assessed.

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 Indiana Corporation. Taxpayer failed to timely file its tax returns and the Indiana Department of Revenue ("Department") imposed a negligence penalty and interest. Taxpayer concedes the untimely filing but requests abatement of penalty and interest based on its timely filing history with the Department. Additional facts will be provided as necessary.

I. Tax Administration - Penalty and Interest.

DISCUSSION

Taxpayer files monthly returns. The period in question is September of 2019. The due date to file September 2019 tax returns was October 21, 2019. Taxpayer filed its Indiana tax return on October 22, 2019, and concedes the return was filed late. Taxpayer claims the late filing was due to the individual who oversaw the funding being out of the office. Upon return of that individual, funds were posted and the return was filed.

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 required 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 has other recent issues with timely filing, and thus will not grant Taxpayers abatement request. Moreover, the untimely filing for September 2019 was not due to a reasonable cause.

Additionally, Taxpayer protests the Department's imposition of interest on its tax liability. IC § 6-8.1-10-1(e) further explains that the Department is not permitted to waive interest. Therefore, waiver of penalty and interest is inappropriate.

FINDING

Taxpayer's protest is denied.

January 28, 2020

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