

Letter of Findings: 04-20221075
Gross Retail Tax Penalty
for the Years 2020 and 2021

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department agreed that Utility Service Provider was statutorily precluded from taking advantage of Indiana's sales tax allowance but also agreed that Service Provider acted with reasonable care in claiming the allowance thereby entitling Service Provider to abatement of any assessed penalties.

ISSUE

I. Gross Retail Tax - Collection Allowance and Penalties.

Authority: IC § 6-2.5-4-5; IC § 6-2.5-4-6; IC § 6-2.5-6-10; IC § 6-8.1-5-1; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#); Indiana Tax Handbook for New and Small Business Owners, <https://www.in.gov/dor/files/new-small-business-handbook.pdf>

Taxpayer argues that it is entitled to abatement of any penalties imposed after the Department found Taxpayer was incorrectly claiming a sales tax collection allowance.

STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of providing Internet, phone, and television services to homes and businesses located in three different Indiana counties. Taxpayer routinely charged and collected Indiana Gross Retail (sales tax) from its customers. Taxpayer also routinely paid Indiana Utility Receipts Tax and other Indiana taxes.

The Indiana Department of Revenue ("Department") found that Taxpayer was claiming a "collection allowance" when it filed and paid sales tax received from its customers. Thereafter, the Department determined that because Taxpayer was a utility provider and paid Utility Receipts Tax, it was not entitled to claim the collection allowance when reporting sales tax.

The Department issued Taxpayer an assessment of penalties. Taxpayer disagreed and submitted a protest to that effect. In its protest, Taxpayer asked for a "[f]inal determination without a hearing." This Letter of Findings results and is based on Taxpayer's protest, publicly available information, and the documentation contained within the protest file.

I. Gross Retail Tax - Collection Allowance and Penalties.

DISCUSSION

The issue is whether Taxpayer has established that it is entitled to abatement of the penalty assessed when Taxpayer incorrectly claimed a collection allowance each time it remitted its customers' sales tax.

Indiana permits retailers to claim a collection allowance each time it reports, and remits Indiana sales tax instructing retailers as follows:

You can deduct and keep a collection allowance from the amount of the taxes collected. To qualify for this collection allowance, you must collect and remit all taxes on time. The amount you can keep is based on your tax liability for the 12-month period ending on June 30 of the previous year. Indiana Tax Handbook for New and Small Business Owners, <https://www.in.gov/dor/files/new-small-business-handbook.pdf> (Last visited

The statutory authority underlying the allowance is found at IC § 6-2.5-6-10 which provides in part:

(a) In order to compensate retail merchants and those required to remit gasoline use tax for collecting and timely remitting the state gross retail tax, the state use tax, and the gasoline use tax, every retail merchant or person required to remit the gasoline use tax, except as provided in subsection (c), is entitled to deduct and retain from the amount of those taxes otherwise required to be remitted under [IC 6-2.5-3.5](#) or under this chapter, if timely remitted, a retail merchant's collection allowance.

(b) The allowance equals a percentage of the retail merchant's state gross retail and use tax or the person's gasoline use tax liability accrued during a calendar year

The amount of the allowance is predicated on the amount of sales tax collected the previous fiscal year by each particular retailer. Small businesses are permitted a larger percentage, while large retailers are permitted a smaller percentage.

The allowance has additional limitations as described in IC § 6-2.5-6-10(c).

A retail merchant described in [IC 6-2.5-4-5](#) or [IC 6-2.5-4-6](#) is not entitled to the allowance provided by this section. A retail merchant is not entitled to the allowance provided by this section with respect to gasoline use taxes imposed by [IC 6-2.5-3.5](#).

IC § 6-2.5-4-5 references utility companies which "furnish or sell electrical energy, natural or artificial gas, water, steam, or steam heat and which produces power exclusively for the use of those public utilities."

IC § 6-2.5-4-6(b) references retail merchants which "furnishes or sells telecommunication services to another person" consisting of "prepaid calling services or prepaid wireless calling" or consisting of "intrastate mobile telecommunications service."

Taxpayer is plainly a retail merchant which furnishes its customers various forms of telecommunication services. Hence, it is statutorily precluded from taking advantage of the collection allowance when remitting its customers' sales tax.

Taxpayer explains that it "did not know that the collection allowance was not permitted for public utility companies." In addition, Taxpayer asks relief from the penalty and interest charges because it has "a good track record of timely reporting" and because the Department's "online tax form (ST-103) automatically calculated the collection allowance for the periods concerned."

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty."

Departmental regulation [45 IAC 15-11-2](#)(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." *Id.*

Departmental regulation [45 IAC 15-11-2](#)(c) requires that 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 IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment - including the negligence penalty - is presumptively valid.

Taxpayer has been timely filing and paying various Indiana taxes for more than 10 years and this is apparently the first time the Department has raised the collection allowance issue. Considering the circumstances, the Department finds no "willful neglect" on Taxpayer's part and agrees that, despite the collection allowance issue, Taxpayer consistently "exercised ordinary business care and prudence" Based on a "case-by-case" analysis and after reviewing "the facts and circumstances of [this] taxpayer" the Department agrees that the penalties should be abated.

Under IC § 6-8.1-10-1(e), the Department is without authority to abate any of the associated interest charges.

FINDING

Taxpayer's protest is sustained in part and denied in part. The Department shall abate the penalties but lacks authority to abate the interest charges.

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