

**Letter of Findings: 04-20231795
Sales and Use Tax
For The Years 2016, 2017, and 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 Indiana Department of Revenue's (the "Department") 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Company met its burden of establishing that the negligence penalty should be abated.

ISSUE

I. Tax Administration - Penalty.

Authority: [IC 6-8.1-5-1](#); [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*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [45 IAC 15-11-2](#).

Taxpayer protests the assessment of penalties.

STATEMENT OF FACTS

Taxpayer is an out-of-state company. The Indiana Department of Revenue ("Department") conducted an audit of tax years 2016, 2017, and 2018. During the audit process, Taxpayer and the Department agreed to use a statistical sampling method related to use tax for each tax year. As a result of the audit, the Department assessed additional use tax for each of the three tax years. The assessments also included associated penalties and interest.

Taxpayer agreed with the majority of adjustments from the audit, including the amount of use tax assessed. Taxpayer paid the assessed use tax and interest. Taxpayer is only protesting the assessment of penalties related to each tax year. Taxpayer requested resolution with a hearing, and an administrative hearing was held. This Letter of Findings results. Additional facts will be provided as necessary.

I. Tax Administration - Penalty.

DISCUSSION

The issue is whether Taxpayer has provided sufficient information justifying the abatement of the penalties.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. A proposed assessment is prima facie evidence that DOR's claim for the unpaid tax is valid. [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. *Id.*; See e.g., *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*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). An assessment, including Taxpayer's penalty assessment, is therefore presumed valid. A taxpayer must provide documentation explaining and supporting that the Department's position is wrong. Additionally, "[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).

[IC 6-8.1-10-2.1\(a\)\(3\)](#) requires the Department to impose a negligence penalty if a taxpayer incurs a tax deficiency after an examination by the Department. The penalty is ten percent of the amount of the deficiency as determined by the Department. [IC 6-8.1-10-2.1\(b\)\(4\)](#). However, if a taxpayer can show that failure to pay the deficiency

determined by the Department was due to reasonable cause and not due to willful neglect, the penalty can be waived by the Department. [IC 6-8.1-10-2.1](#)(d).

Reasonable cause is defined by [45 IAC 15-11-2](#)(b) as:

"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.

Taxpayer's representatives explained the events surrounding the audit and resulting assessments. Taxpayer had a process for capital purchases that involved a quarterly review of such purchases and a multi-layer review for purchases totaling \$18,000 or more. Despite implementation of this process, the Department found insufficient receipts for multiple purchases during the audit along with numerous purchases that were not assessed use tax. Additionally, Taxpayer was unclear on the nuances of Indiana law related to purchases that involved items directly used in the manufacturing process and whether such items should be taxed or considered tax exempt. Taxpayer's representatives also explained that Taxpayer attempted to resolve issues with the audit by working directly with the Department's auditor; however, due to time constraints and knowledge base, Taxpayer ultimately hired the representative's firm to work with the Department and have the issues resolved. Taxpayer has continued to employ the representatives after the audit's completion to ensure compliance with Indiana's tax requirements.

Further, Taxpayer's representatives explained various measures taken to ensure errors found by the Department during the audit do not recur. Taxpayer has implemented the following measures:

- Hired a company controller that maintains control and certifies recordkeeping practices are maintained.
- Digitized its recordkeeping processes.
- Hired and maintained working with various consultants (including attorney and CPA firms).
- Obtained a direct pay permit for remittance of various taxes.
- Established an internal control system to self-assess use tax using the methodology prescribed during the Department's audit review.
- Trained various company employees how to utilize the company's online system to track purchases.
- Implemented new rules and controls surrounding company credit card purchases and recordkeeping requirements regarding those purchases; limited the number of employees eligible to use a company credit card.
- Installed new software programs including an expense management system that incorporates a multi-level review process for purchases.

In short, Taxpayer has taken multiple steps to prevent the types of taxing errors found during the three-year audit period from recurring again in the future.

Taxpayer clearly erred in originally determining its use tax liability. However, there is insufficient information to establish that Taxpayer's error constituted "willful neglect." [IC 6-8.1-10-2.1](#)(d). Taxpayer has a history of compliance with tax deadlines and requirements. Considering that Taxpayer has taken multiple measures to correct the errors and prevent the possibility of similar errors in the future, the Department agrees that in this case, the negligence penalties for the three audited years should be abated.

FINDING

Taxpayer's protest is sustained.

August 18, 2023

Finding Replaces: New

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