DEPARTMENT OF STATE REVENUE

04-20090295P.LOF

Letter of Findings: 09-0295P
Negligence Penalty
For the Years 2006 and 2007

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration - Ten Percent Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana S corporation that is a retail and wholesale seller of motorcycles, ATV's, scooters, accessories, and parts. Taxpayer also provides related repairs and services. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer which resulted in proposed assessments of sales and use tax, interest, and penalty. Taxpayer agreed with the assessment of tax and interest, but protested the assessment of penalty. A hearing was held on Taxpayer's protest and this Letter of Findings results. Additional facts will be provided as necessary.

I. Tax Administration – Ten Percent Negligence Penalty.

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty.

The Department's examination of Taxpayer's sales records including major vehicle sales, parts sales, and repair orders in conjunction with sales tax accrual account, financial reports, and sales tax returns, revealed that Taxpayer made errors in sales tax collection and remittance where Taxpayer either collected sales tax from customers and failed to remit the sales tax or did not collect sales tax at all.

Taxpayer argues that the majority of its errors in reporting sales and use tax were related to the implementation of a new computer program which generated Taxpayer's sales invoices as well as the sales tax report on which Taxpayer relied when completing its ST-103 forms to remit sales and use tax. The Department's audit summary report agrees that this was the source of the majority of Taxpayer's errors.

The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

. . .

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

. . .

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which 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.

45 IAC 15-11-2(c) provides in pertinent part:

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.

Taxpayer argues that its non-payment of tax is not the result of a pattern of purposeful avoidance of tax, but rather mostly due to its reliance on the invoicing and reports generated by a new computer program. Taxpayer also argues that it has a good compliance history with the Department. While Taxpayer generally does have a good compliance history, in this instance, the very fact that Taxpayer was operating with a new software program should have caused Taxpayer and its tax preparer to ascertain that the documentation relating to its sales generated by the system was accurate. The failure to do so is the essence of negligence. Taxpayer need not be engaged in purposeful avoidance of tax to be subject to the negligence penalty.

Taxpayer has not shown that its failure to pay the deficiency was due to reasonable cause and not due to

negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is respectfully denied.

Posted: 11/25/2009 by Legislative Services Agency
An html version of this document.