DEPARTMENT OF STATE REVENUE

02970554.LOF

LETTER OF FINDINGS NUMBER 97-0554 ITC
Gross Income Tax And Adjusted Gross Income Tax
For The Years 1987 Through 1994

NOTICE: Under IC 422-7-7, 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 It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration — Penalty

Authority: IC 6-8.1-10-2.1, Rule 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer manufactures and markets cameras and image processing computers. Taxpayer's corporate headquarters are in Milpitas, California. All manufacturing is done in California. Taxpayer does not maintain an office in Indiana, but has two to four resident employees. The audit, the first for the taxpayer, discovered that RAR's for the fiscal year endings September 30, 1987, 1988, 1989, 1990 and 1991 were not reported to the Department. Taxpayer was notified of the RAR changes in October 1991, but did not report the RAR's to the Department. The RAR adjustments affected the net operating loss carryover to the fiscal years ending September 30, 1987 to September 30, 1993. The assessment for fiscal years ending October 2, 1994 was attributable to changes in gross income tax. Taxpayer did file a tax return for this year, inadvertently reporting interest income for gross income tax purposes and reporting the income from services and sales for adjusted gross income tax purposes.

DISCUSSION

Taxpayer protests the imposition of the penalty based on the facts that it is an out of state taxpayer and this was the results of a first audit. Indiana Administrative Code 15-11-2(c) provides:

> 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.

Negligence is defined in Indiana Administrative Code 15-11-2(b) to be failure to use reasonable 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.

In the case at hand, taxpayer's federal taxable income was modified by the Internal Revenue Service for the fiscal years ending September 30, 1987 through September 30, 1990. Taxpayer failed to report the modifications to the department as required by Indiana Code 6-3-4-6. Most states, like Indiana, require the company to notify the state of any modifications to its federal tax returns as filed. In this case, the taxpayer did not advise the department of the modifications to its federal taxable income, thus the negligence penalty is appropriate for the years affected by the federal modifications and the resulting net operating loss carryovers.

The penalty for the fiscal year ended October 2, 1994 is waived as taxpayer has established reasonable cause. Taxpayer filed a return for this period and reported the income derived from Indiana for adjusted gross income tax purposes, and mistakenly reported interest income as subject to gross income tax.

FINDING

Taxpayer's protest as to the imposition of the negligence penalty is denied for the fiscal years ended September 30, 1990 through September 30, 1993. Taxpayer's protest of the negligence penalty is sustained for the fiscal year ended October 2, 1994.