

Letter of Findings Number: 05-0287
Income Tax
For Tax Year 2003

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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

I. Income Tax–Burden of Proof

Authority: [IC 6-8.1-5-1\(b\)](#); [45 IAC 15-5-3\(b\)](#)

Taxpayer protests the imposition of income taxes.

II. Tax Administration–Negligence Penalty and Interest

Authority: [IC 6-8.1-10-1](#); [45 IAC 15-11-2](#)

Taxpayer protests the imposition of a ten percent negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is the owner and manager of a corporation (hereinafter "Company X") that operates a campground and trailer park. Taxpayer lived in a residence (referred to as a "pole barn" by the taxpayer) owned by Company X. More facts will be provided as needed below.

I. Income Tax–Burden of Proof

DISCUSSION

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. [IC 6-8.1-5-1\(b\)](#) states in pertinent part:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer. . . ." [45 IAC 15-5-3\(b\)](#).

An investigation report notes the following:

The taxpayer was found to be living in a residence owned by [Company X]. The taxpayer is the manager and owner of the corporation. He sold his previous residence and moved to the corporate property in 2003. The new residence is located behind a fence at the back of the park and appears to be at least 100 yards from the nearest camp site. Access to the residence is through a locked gate marked with a no trespassing sign.

And further:

The corporation was found to be paying the expenses of the residence and deducting the depreciation on the structures.

This was, according to the report, a way of "liv[ing] tax free." The report concluded (in pertinent part):

As these arrangements were not an arms length transaction and caused the taxpayer to receive a distribution of property from the corporation, an adjustment of adjusted gross income . . . is being made. . .

Taxpayer in recent correspondence notes the following "Sequence of Events" (in relevant part):

1. [Taxpayer and his wife] moved into a building on [Company X's] property in 2003. This move was necessary so the [taxpayer and his wife] could be on site in managing the camp ground and trailer park as there was not sufficient funding in [Company X] to hire a full-time manager.

. . .

4. Since [Company X's] inception in 1997 . . . [the taxpayer and his wife], have had necessary work performed within the park by loaning money from their personal income. [Company X] did NOT have the cash flow to support the necessary capital improvements needed at the park. These transactions are recorded on the books as additional paid in capital.

5. [The Department] assessed the [taxpayer and his wife] with the additional income. Our request and proposal was removing the company [Company X] assets and apply the same against the additional monies paid in capital. Simply stated, a pay back.

Taxpayer also states that the amended "2003 Federal and State corporate tax return of [Company X] was accepted by the Internal Revenue Service" and that the "balance sheet and depreciation schedules reflect these changes. . ."

In earlier correspondence the taxpayer noted the following "options" that were available to the taxpayer:

- 1) They [taxpayer and his wife] could rent the property that they occupy.
- 2) They could purchase the property out-right or on contract.
- 3) [Taxpayer and his wife] have contributed capital to the corporation over the years to build up the park to an amount of \$188,032.00. The [taxpayer and his wife] could take a tax free distribution in exchange for the Addition Paid In Capital.

The taxpayer concludes the earlier correspondence with a proposal:

[W]e propose an adjustment to income for 2003 regarding living in the pole barn and using the garage in the amount of \$854.84. This is backing out the depreciation deduction for (4) months that the [taxpayer and his wife] lived in the pole barn. . . .

Taxpayer is in effect trying to re-characterize the arrangement, and doing so *after the fact*. The taxpayer briefly cites to federal tax law but does not develop this argument. As noted at the outset, the burden of proving the assessment wrong rests with the taxpayer, as provided in [IC 6-8.1-5-1](#)(b). Taxpayer has not met this burden.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Negligence Penalty and Interest

DISCUSSION

The Department imposed a ten percent negligence penalty and interest. With regard to interest, the Department refers to [IC 6-8.1-10-1](#), which states in relevant part (*Emphasis added*):

(a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

. . .

(e) The department *may not waive* the interest imposed under this section.

With regard to the 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 has not affirmatively established 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 denied.

Posted: 08/02/2006 by Legislative Services Agency

An [html](#) version of this document.