

**Letter of Findings Number: 06-0041P
Individual Income Tax
For Calendar Year 2004**

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ISSUE

I. Tax Administration- Ten Percent (10%) Negligence Penalty

Authority: [IC 6-8.1-10-2.1](#), [45 IAC 15-11-2](#) (b)(c).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer filed the IT-40PNR Individual income tax form for calendar year 2004. The taxpayer did not timely file the return and penalties were assessed. The taxpayer protested the assessment of these penalties. The taxpayer did not respond to correspondence and this letter of findings is written based on the information contained in the file.

I. Tax Administration- Ten Percent (10 percent) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10 percent) negligence penalty pursuant to [IC 6-8.1-10-2.1](#). Indiana Regulation [45 IAC 15-11-2](#) (b) clarifies the standard for the imposition of the negligence penalty as follows:

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.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#) (c) as follows:

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. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The taxpayer did not provide substantial documentation to indicate that its failure to pay the assessed tax was due to reasonable cause rather than negligence.

FINDING

The taxpayer's protest is denied.

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