

Letter of Findings Number: 06-0103P
Income Tax
For Period Ended 12/31/2004

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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 was assessed a 10% negligence penalty for the late payment of income taxes for the tax period of 12/31/2004.

The 2004 estimated tax payment and extension payments amounted to approximately 47% of the total tax liability for the year. The remaining 53% was not paid by the taxpayer until the extended due date when the return was filed.

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

DISCUSSION

The taxpayer is a large sophisticated multi-state taxpayer with several affiliated companies. The taxpayer files a consolidated Indiana income tax return. Per the taxpayer, they conducted an Indiana nexus study after the original due date of the 2004 return, but prior to the extended due date. As a result of this study conducted by the taxpayer they concluded that certain entities were erroneously excluded from the Indiana return in both prior years and in computing the amount of estimated tax payments needed for 2004. In fact, the taxpayer failed to include the correct companies for at least the three years prior to 2004 which were 2001, 2002 and 2003.

As a result of this error, the taxpayer failed to pay approximately 53% of the 2004 Indiana income taxes due by the original due date of the return. The taxpayer was assessed penalty and interest for this underpayment. The taxpayer now asks for abatement of penalty based on their position that the underpayment was due to reasonable cause and not willful neglect.

[IC 6-8.1-10-2.1](#) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation [45 IAC 15-11-2](#)(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer."

[IC 6-8.1-10-2.1](#)(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation [45 IAC 15-11-2](#)(c) requires that 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...."

The Department must question whether taxpayer's actions in this matter constitute the "reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." As a large multi-state taxpayer, the taxpayer is responsible for ensuring that all states returns are filed according to the requirements of each state. As part of this responsibility, the taxpayer is required ensure that all required corporations are properly included in the states combined/consolidated returns. While the taxpayer did find the error as a result of their internal nexus study, it was not until several years of returns were filed which erroneously excluded companies from the return which were required to be included.

Taxpayer has not set forth a basis whereby the Department could conclude taxpayer exercised the degree of care statutorily imposed upon an ordinarily reasonable taxpayer. Therefore, given the totality of all the circumstances, reasonable cause has not been demonstrated as required to permit waiver of the penalty.

FINDING

Taxpayer's protest concerning the assessment of the 10% negligence penalty is denied.

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