DEPARTMENT OF STATE REVENUE

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Letter of Findings Number: 06-0325P
Penalty
For the Period: 2002-2004

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ISSUE

I. Tax Administration – Penalty

Authority: IC § 6-8.1-5-1(b); 45 IAC 15-5-3(b); 45 IAC 15-11-2; *Hoogenboom-Nofziger v. State Bd. Of Tax Comm'rs*, 715 N.E.2d 1018 (Ind. Tax Ct. 1999); 45 IAC 15-5-3(b)(7)

The taxpayer protests the assessment of a penalty.

STATEMENT OF FACTS

An income tax investigation conducted by the Department resulted in assessments against the taxpayer. The taxpayer protested the penalty. A hearing was scheduled, but the taxpayer decided not to attend and instead wanted to "have the protest resolved based upon the written information submitted previously." More facts will be provided below.

I. Tax Administration – Penalty

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). Also of import, although a property tax case, is *Hoogenboom-Nofziger v. State Bd. Of Tax Comm'rs*, 715 N.E.2d 1018, 1024 (Ind. Tax Ct. 1999), a case in which the Indiana Tax Court explained that, "State Board hearing officers do not have the duty to make a taxpayer's case."

The taxpayer protests the imposition of a negligence penalty. The taxpayer states that taxpayer believes:

[T]here is reasonable cause to protest the penalty assessments against [taxpayer] for the years 2002 thru 2004. . ..

And further, the taxpayer states, "We hereby request the Indiana Department of Revenue give consideration toward abating the penalty assessments noted earlier."

45 IAC 15-11-2(b) states (in part):

"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.

45 IAC 15-11-2(c) is also of import, and states that the Department "shall waive the negligence penalty . . . if the taxpayer affirmatively establishes that the failure . . . was due to reasonable cause and not due to negligence." 45 IAC 15-11-2(c) notes:

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. . ..

As stated at the outset, the taxpayer bears the burden of proof. In addition, 45 IAC 15-5-3(b)(7) notes that the "purpose of the hearing is to *clearly* establish the taxpayer's *specific* objections to the assessment and *reasoning* for these objections." (*Emphasis* added). The taxpayer asserts reasonable cause, but it has failed to clearly establish reasonable cause by "demonstrate[ing] that it exercised ordinary business care and prudence" as required by 45 IAC 15-11-2(c).

FINDING

The taxpayer's penalty protest is denied.

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