

Letter of Findings Number: 06-0313
Penalty
For the Period: 2003

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ISSUE

I. Tax Administration – Penalty

Authority: IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; IC § 6-8.1-10-3; [45 IAC 15-5-3](#)

Taxpayers protest the assessment of a penalty.

STATEMENT OF FACTS

Taxpayers are a married couple residing in another state. In 2003, one of Taxpayers worked in Indiana. Taxpayers originally did not file an Indiana income tax return for 2003.

Based on the Form 1099 of one of the Taxpayers, the Indiana Department of Revenue ("Department") prepared a 2003 Indiana income tax return for Taxpayers. The Department imposed tax, interest, and a twenty-percent penalty against Taxpayers.

Taxpayers later filed a return, which reported a somewhat different income than Taxpayers originally reported; however, the income difference is not at issue. Taxpayers requested waiver of penalties. The Department granted Taxpayers until June 25, 2007, to provide additional information regarding its protest. Taxpayers did not submit additional information prior to June 25, 2007, and thus this Letter of Findings is based on Taxpayers' tax returns and the original assessment.

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\(b\)](#). Taxpayers argue that they reported and paid tax on the full amount of income to their home state. Taxpayers' home state imposed income taxes on Taxpayers' Indiana income as well as income from other sources.

Under IC § 6-8.1-10-3:

(a) If a person fails to file a return on or before the due date, the department shall send him a notice, by United States mail, stating that he has thirty (30) days from the date the notice is mailed to file the return. If the person does not file the return within the thirty (30) day period, the department may prepare a return for him, based on the best information available to the department. The department prepared return is prima facie correct.

(b) If the department prepares a person's return under this section, the person is subject to a penalty of twenty percent (20%) of the unpaid tax. In the absence of fraud, the penalty imposed under this section is in place of and not in addition to the penalties imposed under any other section.

IC § 6-8.1-10-2.1(d) states (*emphasis added*):

(d) If a person subject to the penalty imposed *under this section* can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

The penalty waiver provided under IC § 6-8.1-10-2.1(d) is for penalties imposed under IC § 6-8.1-10-2.1, not IC § 6-8.1-10-3. Thus, the penalty imposed when the Department completes a return on behalf of a taxpayer may not be waived. Taxpayers have not otherwise presented legal or factual grounds to justify penalty waiver. However, the penalty should be based on the tax liability reported on Taxpayers' later-filed return.

FINDING

Taxpayers' penalty protest is denied except to the extent that Taxpayers' Indiana income was reduced by the later-filed return.

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