

**Letter of Findings: 06-0495  
Corporate Income Tax  
For the Tax Years 1996-2000**

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**ISSUES**

**I. Corporate Income Tax—Best Information Available (BIA).**

**Authority:** IC § 6-8.1-5-1; [45 IAC 15-5-1](#).

Taxpayer protests the imposition of corporate income tax assessed based upon the best information available to the Department.

**II. Tax Administration—Negligence and Underpayment Penalties.**

**Authority:** IC § 6-3-4-4.1; IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of negligence and underpayment penalties.

**STATEMENT OF FACTS**

Taxpayer is a Delaware corporation that is domiciled in Illinois, which manufactures specialty chemicals and provides chemical management services. Taxpayer has been registered with the state of Indiana as a payroll tax withholding agent since 1990 and as a registered retail merchant since 1988. For the 1996-2000 tax years, Taxpayer had sales associates in Indiana using an Indiana company address and telephone number. For the years at issue, Taxpayer also had a property lease for a location in Rockport, Indiana, and had made use tax payments for Indiana office supplies. In 2005, Taxpayer participated in Indiana's Amnesty Program that ran from September 15, 2005, to November 15, 2005, for tax liabilities from the 2001-2004 tax years. As a part of the Amnesty Program, Taxpayer voluntarily submitted Indiana corporate income tax returns for the 2001-2004 tax years.

Pursuant to an audit, the Indiana Department of Revenue (Department) assessed corporate income tax, penalties, and interest for the 1996-2000 tax years. The Department found that Taxpayer had sufficient nexus with Indiana to subject Taxpayer to Indiana corporate income taxes for the 1996-2000 tax years. Since Taxpayer declined to make its books and records available to the Department, the assessments were made based upon the best information available to the Department. Taxpayer protested this imposition of tax and penalties. An administrative hearing was held, and this Letter of Findings results.

**I. Corporate Income Tax—Best Information Available (BIA).**

**DISCUSSION**

The Department found that Taxpayer had sufficient nexus with Indiana to subject Taxpayer to Indiana corporate income taxes for the 1996-2000 tax years and made assessments based upon the best information available to the Department as prescribed by [45 IAC 15-5-1](#).

Taxpayer protests the imposition of corporate income taxes for the tax periods 1996-2000, which were assessed based upon the best information available to the Department. Taxpayer asserts that the Department has not established that Taxpayer had nexus for the years at issue. However, Taxpayer has not submitted any documents to support its assertion. Moreover, Taxpayer did not cite any statute, regulation, or case law for the proposition that the Department is required to accept Taxpayer's assertions as to the nature of Taxpayer's business without providing the supporting documentation. Pursuant to IC § 6-8.1-5-1(b) all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect. Since Taxpayer failed to produce any documentation that demonstrates that the Department's determination of nexus was incorrect, Taxpayer has failed to meet its burden to prove that Taxpayer did not have nexus with Indiana.

Additionally, during the course of protest Taxpayer submitted corporate tax returns for the tax periods 1996 to 2000 to replace the BIA assessments and requested that the returns be considered. Therefore, the returns will be submitted for audit.

**FINDING**

Taxpayer's protest is granted in part subject to the results of an audit of Taxpayer's returns.

**II. Tax Administration— Negligence and Underpayment Penalties.**

The Department issued proposed assessments imposing the ten percent negligence penalty for each of the tax years in question. The Department also imposed the ten percent underpayment penalty for the 1998, 1999, and 2002 tax years. Taxpayer protests the imposition of the penalties.

**A. Negligence Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of the ten percent negligence penalties for the tax years in question. The Department refers to IC § 6-8.1-10-2.1(a)(3), which provides "if a person... incurs, upon examination by the

department, a deficiency that is due to negligence... the person is subject to a penalty."

The Department also 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.

The Department may waive the negligence penalty as provided in [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.

In this case, Taxpayer incurred deficiencies which the Department determined were due to negligence under [45 IAC 15-11-2\(b\)](#), and were subject to a penalty under IC § 6-8.1-10-2.1(a). Within the protest of protest, Taxpayer asserts that it exercised ordinary business care and prudence in deciding not to file the corporate income tax returns with Indiana. Taxpayer reasons that it attempted to file all returns it believed were due as part of its amnesty filing and maintains that it was unaware that it had nexus with Indiana prior to 2001. Under IC § 6-8.1-5-1(b), "[t]he burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Taxpayer has not affirmatively established that its failure to pay the deficiencies was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

Therefore, Taxpayer's protest is respectfully denied.

#### **B. Underpayment Penalty.**

#### **DISCUSSION**

Taxpayer protests the imposition of the ten percent penalty for underpayment of estimated tax for the 1998, 1999, and 2000 tax years as prescribed under IC § 6-8.1-10-2.1(b).

The Department refers to IC § 6-3-4-4.1(e), which provides "[t]he penalty prescribed by [IC 6-8.1-10-2.1\(b\)](#) shall be assessed by the department on corporations failing to make payments" for estimated tax liability "as required in subsection (d)." Therefore, pursuant to IC § 6-8.1-10-2.1(b) Taxpayer was assessed a penalty equal to ten percent of the tax due. Under IC § 6-8.1-10-2.1(d), the Department may waive the underpayment penalty "if a person subject to the penalty imposed under this section can show that its failure to... pay... was due to reasonable cause and not due to willful neglect."

In this case, Taxpayer incurred tax liabilities, which resulted in Taxpayer's underpayment of estimated tax, and were subject to a penalty under IC § 6-8.1-10-2.1(b). During the hearing, Taxpayer asserted that it exercised ordinary business care and prudence in deciding not to pay estimated taxes for the 1998, 1999, and 2002 tax years. Taxpayer reasons that it attempted to file all returns it believed were due as part of its amnesty filing and maintains that it was unaware of the situation giving it nexus with Indiana prior to 2001. Under IC § 6-8.1-5-1(b), "[t]he burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Taxpayer has not affirmatively established that its failure to pay the deficiencies was due to reasonable cause, as required by IC § 6-8.1-10-2.1(d).

Therefore, Taxpayer's protest is respectfully denied.

#### **FINDING**

In summary, Taxpayer's protest of the imposition of both penalties is respectfully denied.

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