

**Letter of Findings Number: 06-0278P  
Individual Income Tax-Penalty  
For the Period 2004**

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**ISSUE**

**I. Tax Administration-Penalty.**

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

Taxpayers protest the imposition of the ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayers are a married couple filing a joint return and are hereinafter simply referred to as "Taxpayer." Taxpayer filed an extension for the 2004 tax year and paid approximately \$160,000 in tax prior to the regular due date for the 2004 return. Taxpayer's liability was determined to be approximately \$250,000 for the year in question. The Department assessed a ten percent penalty on the original underpayment.

The Department sent a letter to Taxpayer stating that Taxpayer could request a hearing by replying to the letter within twenty (20) days of the letter. Taxpayer did not reply to the Department's letter. Due to Taxpayer's failure to reply, this Letter of Findings is written based on the information in Taxpayer's protest file and other Department records relating to Taxpayer.

**I. Tax Administration-Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to report the proper amount of adjusted gross income tax.

Under IC § 6-8.1-6-1.

(a) If a person responsible for filing a tax return is unable to file the return by the appropriate due date, he may petition the department, before that due date, for a filing extension. The person must include with the petition a payment of at least ninety percent (90 [percent]) of the tax that is reasonably expected to be due on the due date. When the department receives the petition and the payment, the department shall grant the person a sixty (60) day extension

(b) If a person responsible for filing a tax return has received an extension of the due date and is still unable to file the return by the extended due date, he may petition the department for another extension. The person must include in the petition a statement of the reasons for his inability to file the return by the due date. If the department finds that the person's petition is proper and that the person has good cause for requesting the extension, the department may extend the person's due date for any period that the department deems reasonable under the circumstances. The department may allow additional, successive extensions if the person properly petitions for the extension before the end of his current extension period.

(c) If the Internal Revenue Service allows a person an extension on his federal income tax return, the corresponding due dates for the person's Indiana income tax returns are automatically extended for the same period as the federal extension, plus thirty (30) days. However, the person must pay at least ninety percent (90 [percent]) of the Indiana income tax that is reasonably expected to be due on the original due date by that due date, or he may be subject to the penalties imposed for failure to pay the tax.

(d) Any tax that remains unpaid during an extension period accrues interest at a rate established under [IC 6-8.1-10-1](#) from the original due date, but that tax will not accrue any late payment penalties until the extension period has ended.

Thus, a taxpayer who makes a payment of at least ninety percent of the ultimate tax liability for a year prior to the due date for that year's return is not subject to underpayment penalties unless the taxpayer fails to pay the difference at or prior to the extension deadline. If the payment is less than ninety percent of the ultimate tax liability for a year, the taxpayer is potentially subject to penalties.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "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.

(c) 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.

Taxpayer notes that it did not receive four Form K-1's from S corporations until September 15, 2005.

However, Taxpayer owned a majority interest or the entire interest in these four S corporations. Absent some type of explanation of the reason for the lack of knowledge of the S corporation's income, particularly in light of Taxpayer's control over the corporations, Taxpayer has not affirmatively established reasonable care required to justify penalty waiver.

Taxpayer further argues that it received a large capital gain in the year in question which resulted in its underestimate of income and resulting tax paid. Absent some reason for the extraordinary nature of the income or its determination that prevented Taxpayer from reasonably estimating its estimated payment, Taxpayer has not affirmatively established reasonable care required to justify penalty waiver.

Beyond its assertions, Taxpayer has not provided sufficient grounds in its protest to justify the Department's waiver of penalty.

#### **FINDING**

Taxpayer's protest is denied.

*Posted: 01/30/2008 by Legislative Services Agency*

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