

Letter of Findings: 07-0453
Indiana Adjusted Gross Income Tax
For the Years 2003 and 2004

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ISSUE

I. Proposed Assessments – Indiana Adjusted Gross Income Tax.

Authority: IC § 6-8.1-5-1(a); IC § 6-8.1-5-1(b)

Taxpayer challenges proposed income tax assessment for 2003 and 2004.

II. Tax Administration – Penalty.

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

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

In 2003 and 2004, Taxpayer was issued a Form 1099 by Horsemen's Bookkeeper regarding Indiana racing income. The Department of Revenue (Department) conducted an investigation and determined that taxpayer owed state income tax for the years in question.

The protest was assigned to a hearing officer, and an administrative hearing was held. This Letter of Findings was prepared based upon the information contained within taxpayer's file.

I. Proposed Assessments – Indiana Adjusted Gross Income Tax.

DISCUSSION

IC § 6-8.1-5-1(a) states in part that "If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available." The statute *requires* the Department to issue proposed assessments when the Department believes that the taxpayer has underpaid his or her state income tax.

Once the notices of proposed assessments are issued, it is up to the taxpayer to provide information demonstrating that the assessments are incorrect. "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." IC § 6-8.1-5-1(b). The taxpayer did not provide a corrected 1099 for the year in question, nor did he provide a tax return showing that tax was paid on the racing income earned in Indiana.

Based upon the information contained within taxpayer's file, the Department reasonably believed that taxpayer had not paid tax on the 1099 income from 2003 and 2004.

The taxpayer stated at hearing that he would amend his 2003 and 2004 Arkansas individual tax returns and subsequently file Indiana individual tax returns for the years in question.

FINDING

Taxpayer's protest is denied.

II. Tax Administration–Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's 1099 income from the tax years 2003 and 2004.

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 contends that his tax preparer did not file in Indiana regarding the 1099 income for the tax years 2003 and 2004. Taxpayer stated at hearing that he would amend his Arkansas individual tax return and subsequently file an Indiana tax return for the years in question. Taxpayer has shown reasonable cause for waiver of the negligence penalty.

FINDING

Taxpayer's protest is sustained.

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