

**Letter of Findings Number: 08-0133P
Individual Income Tax-Penalty
For the Years 1996-1999**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration–Negligence Penalty.

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

Taxpayers protest the imposition of the ten percent negligence penalty.

II. Tax Administration–Failure-to-File Penalty.

Authority: IC § 6-8.1-10-3.

Taxpayers protest the imposition of the twenty percent penalty for the Department's filing of a tax return on their behalf.

III. Tax Administration–Estimated Tax Penalty.

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

Taxpayers protest the imposition of the ten percent penalty for failure to make sufficient estimated tax payments during the years in question.

IV. Tax Administration–Interest.

Authority: IC § 6-8.1-10-1.

Taxpayers protest the imposition of interest on their tax liability.

STATEMENT OF FACTS

Taxpayers are a married couple filing a joint return and are hereinafter simply referred to as "Taxpayer." Taxpayer is a nonresident of Indiana. Taxpayer owned an interest in an S corporation. The S corporation in turn owned an interest in a partnership. The partnership engaged in business in Indiana.

Taxpayer did not file an Indiana income tax return for the years in question. The Department audited Taxpayer and determined that Taxpayer received Indiana-source income for the years in question. The Department imposed tax, interest, and penalties. Taxpayer protests only the interest and penalties.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to report and remit the proper amount of adjusted gross income tax with respect to 1996.

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 has not provided information beyond reliance on Taxpayer's accounting firm. Taxpayer has not established reasonable cause.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Failure-to-File Penalty.

DISCUSSION

Taxpayer protests the imposition of the twenty percent penalty imposed upon the Department's filing of tax returns for 1997, 1998, and 1999 on their behalf. This penalty is imposed pursuant to IC § 6-8.1-10-3, which states:

(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.

Even if reasonable cause allowed for penalty abatement, Taxpayer has not provided information beyond reliance on Taxpayer's accounting firm. Taxpayer has not established reasonable cause.

FINDING

Taxpayer's protest is denied.

III. Tax Administration—Estimated Tax Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent penalty on Taxpayer's failure to make sufficient estimated tax payments as required pursuant to IC § 6-3-4-4.1(b)-(c), which provides for a ten-percent penalty for failure to make sufficient payments.

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 has not provided information beyond reliance on Taxpayer's accounting firm. Taxpayer has not established reasonable cause.

FINDING

Taxpayer's protest is denied.

IV. Tax Administration—Interest.

DISCUSSION

Taxpayer protests the imposition of interest with respect to their assessment. Under IC § 6-8.1-10-1(e), interest cannot be waived in Taxpayer's protest.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protest is denied as to all issues.

Posted: 07/02/2008 by Legislative Services Agency

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