

Supplemental Letter of Findings Number: 08-0239P
Income Tax
For Tax Years 2001-2002

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ISSUE

I. Tax Administration–Negligence Penalty.

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

Taxpayer protests imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer operates a nationwide business. As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments for base tax, penalties and interest for the tax years 2001 through 2002. Taxpayer protested a portion of the assessments for base tax and the negligence penalty. The Department issued a Letter of Findings sustaining Taxpayer on the protest of a portion of the base tax, but inadvertently did not address the protest of penalty. Taxpayer requested a rehearing to address penalty, which the Department granted. An administrative hearing was held and this Supplemental Letter of Findings results. Further facts will be supplied as required.

I. Tax Administration–Negligence Penalty.

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty for the tax years in question. Taxpayer protests the imposition of penalty and states that the only reason it did not pay the base taxes in the first place was that it was unaware that it was liable for those taxes. The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department 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.

[45 IAC 15-11-2](#)(c) provides in pertinent part:

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.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under [45 IAC 15-11-2](#)(b), and so was subject to a penalty under IC § 6-8.1-10-2.1(a). In the course of the protest process, Taxpayer has established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2](#)(c).

FINDING

Taxpayer's protest is sustained.

CONCLUSION

The negligence penalty will be waived for the years at issue.

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