

**Letter of Findings Number: 08-0198P
Negligence Penalty
For the Year 2006**

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ISSUE

I. Tax Administration – Negligence Penalty.

Authority: IC § 6-8.1-6-1; 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

Taxpayers are Ohio residents, who are a married couple and file jointly. One member of the couple is a shareholder ("Shareholder") in an Indiana subchapter-S corporation ("S-Corp"). The S-Corp had previously filed as a regular C corporation with a fiscal year ending on June 30. S-Corp's last filing as a C corporation was on June 30, 2006. The corporation filed a Subchapter S corporation return for July 1, 2006, through December 31, 2006, on April 13, 2007.

Taxpayers filed a 2006 IT-40 on October 14, 2007. Taxpayers were assessed a penalty for late payment of income tax. Taxpayers protested the penalty. The Department presented Taxpayers the opportunity to request a hearing on its protest. Taxpayers did not elect to have a hearing on their protest. This Letter of Findings, therefore, is written based on the information in Taxpayers' protest file. Additional facts will be provided as necessary.

I. Tax Administration – Negligence Penalty.

DISCUSSION

Taxpayers protest the imposition of a penalty for late payment of income tax.

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.

IC § 6-8.1-10-2.1 states in relevant part:

(e) A person who wishes to avoid the penalty imposed under this section must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.

(Emphasis added).

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.

IC § 6-8.1-6-1 states:

(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.

(*Emphasis added*).

Taxpayers request that the negligence penalty be waived because their failure to timely pay their 2006 Indiana income tax was due to reasonable cause and not negligence. In their November 26, 2007, protest letter (incorporated by reference into a February 26, 2008, letter), Taxpayers state that the 2006 Indiana return was the first Indiana return ever required for them. The 2006 filing obligation resulted from Shareholder's ownership interest in an Indiana pass-through entity whose subchapter-S status was first effective during 2006. Taxpayers argue they were cognizant of their Indiana filing obligations which they fulfilled by the end of 2006. Taxpayers state that they reviewed the need for estimating taxes and making estimated tax payments, but did not actually make estimated payments because Shareholder was informed by S-Corp that the latter would include Shareholder's share of all income from S-Corp in an Indiana composite return and that all Indiana income tax would be paid on her behalf by S-Corp. Taxpayers state that Shareholder did not receive final 2006 information (such as schedule K-1, etc.) from S-Corp until well after the April 15, 2007 filing deadline. In the meantime, Taxpayers filed for extensions with the Internal Revenue Service, Indiana, and Ohio as required. Taxpayers state they were informed that all their Indiana taxes would be paid via S-Corp's return and therefore payment(s) were not required with their extension forms. Taxpayers further explain that sometime during the summer of 2007, Shareholder received final tax information from S Corp, after the April 15, 2007, tax filing deadline. Shareholder was informed that she would not be included in a composite return and that, therefore, she would have to file her own taxes. S-Corp explained to Shareholder that its accountants and tax advisors had recommended that S-Corp revise its plans to file composite returns due to the complexity involved. The April 15, 2007 filing deadline had passed.

Taxpayers argue therefore that they took all reasonable and prudent steps to comply with Indiana filing and tax payment requirements and therefore there is reasonable cause to waive the negligence penalty.

According to the Department's records S-Corp filed its return on April 13, 2007. Taxpayers did not file their return until October 14, 2007. Furthermore, Taxpayers have not substantiated their protest with documentary evidence; in other words, Taxpayers have not made "an affirmative showing of all facts alleged as a reasonable cause." IC § 6-8.1-10-2.1(e). Therefore, Taxpayers have not met their burden to prove reasonable cause in filing their Indiana income tax returns late.

FINDING

Taxpayer's protest is respectfully denied.

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