

**Letter of Findings: 07-0360  
Indiana Corporate Income Tax  
For the Tax Years 1998-2001**

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**ISSUES**

**I. Corporate Income Tax—Payments and Credits.**

**Authority:** IC § 6-8.1-5-1.

Taxpayer protests the Department's application of payments and credits to its corporate income tax liabilities.

**II. Tax Administration—Penalty.**

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

Taxpayer protests the imposition of the negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is a multi-structured business consisting of a parent corporation ("parent") and several subsidiaries. For gross income tax purposes, Taxpayer filed a consolidated tax return for its parent and subsidiaries that had activities in Indiana. For adjusted gross income tax purposes, Taxpayer filed on combined unitary basis for its parent and subsidiaries included in a certain group and filed separate returns for the other subsidiaries not belonging to that group. Pursuant to an audit, the Indiana Department of Revenue (Department) assessed additional gross income tax, adjusted gross income tax, and interest for the 1998, 1999, 2000, and 2001 tax years and assessed a penalty for the 1998 tax year. The Taxpayer protested the assessment. An administrative hearing was held, and this Letter of Findings results.

**I. Corporate Income Tax—Payments and Credits.**

**DISCUSSION**

Pursuant to IC § 6-8.1-5-1(b), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

Taxpayer protests the Department's application of payments and credits to its corporate income tax liabilities. During the course of the protest, Taxpayer submitted tax returns, cancelled checks, and electronic funds transfer ("EFT") information to demonstrate that certain payments and credits were not credited to the appropriate tax entity or tax year. Taxpayer had made multiple payments to the Department through its parent and subsidiaries. Due to the complex structure of Taxpayer's business and various filing methods of its entities, the Department will perform an audit of this payment and credit information to verify the proper allocation of the payments and credits to the proper tax entity and tax year. Therefore, Taxpayer's protest, to the extent that the Department finds that any payments or credits were not properly applied, is sustained subject to the findings of the audit of the payment and credit information.

**FINDING**

Taxpayer's protest is sustained subject to the findings of an audit of taxpayer's payments and credits.

**II. Tax Administration—Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of the ten (10) percent negligence penalties for the tax years in question. The Department refers to IC § 6-8.1-10-2.1(a)(3), which provides "if a person... incurs, upon examination by the department, a deficiency that is due to negligence... the person is subject to a penalty."

The Department also 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.

The Department may waive the negligence penalty as provided in [45 IAC 15-11-2\(c\)](#), as follows:

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 provided sufficient information to establish that its failure to pay the deficiency was not due to Taxpayer's negligence, but was due to reasonable cause as required by [45 IAC 15-11-2\(c\)](#).

#### **FINDING**

Taxpayer's protest is sustained.

#### **CONCLUSION**

In summary, Taxpayer's protest of the application of its payment and credits is sustained subject to the findings of an audit of the payment and credit information, and Taxpayer's protest to the imposition of penalty is sustained.

*Posted: 08/27/2008 by Legislative Services Agency*

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