

**Letter of Findings Number: 08-0126P
Individual Income Tax-Penalty
For the Years 2002 to 2004**

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ISSUES

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–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 one of the years in question.

III. 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 owned an interest in a partnership that conducted business in Indiana. Taxpayer initially did not file an Indiana individual income tax return for the years in question. Taxpayer reported all the income to Taxpayer's domiciliary state. The Department audited Taxpayer and imposed tax, interest, and penalties. Taxpayer protests only the interest and penalties.

The Department sent a letter to Taxpayer stating that Taxpayer could request a hearing by replying to the letter within twenty (20) days of the letter. Taxpayer did not reply to the Department's letter. Due to Taxpayer's failure to reply, this Letter of Findings is written based on the information in Taxpayer's protest file and other Department records relating to Taxpayer.

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 2002 through 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 protests that Taxpayer was unaware of the requirement to report income to Indiana. However, for

2000 and 2001, Taxpayer did file an Indiana individual income tax return when Taxpayer's partnership reported an Indiana loss. Taxpayer has not provided information to explain the filing in years with losses but not the years with net income. Taxpayer has not otherwise provided sufficient information to justify penalty waiver.

FINDING

Taxpayer's protest is denied.

II. 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 for 2004 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 reasonable cause for the failure to pay estimated taxes during 2004.

FINDING

Taxpayer's protest is denied.

III. 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.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protest is denied on all issues.

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