

**Letter of Findings Number: 08-0271P
Individual Income Tax-Penalty
For the Years 2005 and 2006**

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ISSUES

I. Tax Administration–Negligence Penalty.

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

Taxpayer protests the imposition of the ten percent negligence penalty.

II. Tax Administration–Interest.

Authority: IC § 6-8.1-10-1.

Taxpayer protests the imposition of interest on his tax liability.

STATEMENT OF FACTS

Taxpayer is an individual. During the years in question, Taxpayer was the beneficiary of a trust. Taxpayer reported income on his individual income tax return based on K-1 information provided by the trust. This K-1 information included distributions to Taxpayer by the trust. Separately, the trust reported its net income less distributions on the trust's Indiana fiduciary income tax return.

After filing the returns for the years in question, Taxpayer received an amended K-1 from the trust. According to Taxpayer, the trust had underreported income distributions to Taxpayer. Thus, Taxpayer's adjusted gross income increased by the amount of underreported distributions and the trust's taxable income decreased by an equal amount.

Taxpayer filed amended income tax returns for the years in question. The Department assessed interest and penalty, which Taxpayer protested.

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 2005 and 2006.

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 was provided erroneous information by a third party. Taxpayer's initial reliance on the erroneous information was reasonable under the circumstances. Therefore, Taxpayer's protest is sustained.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration–Interest.

DISCUSSION

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

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protest is sustained with respect to penalty and denied with respect to interest.

Posted: 10/29/2008 by Legislative Services Agency

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