

**Letter of Findings Number: 08-0475P  
Negligence Penalty and Interest  
For Tax Years 2004-06**

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**ISSUE**

**I. Tax Administration–Negligence Penalty and Interest.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent negligence penalty and interest.

**STATEMENT OF FACTS**

Taxpayer is an individual. As the result of an investigation, the Indiana Department of Revenue ("Department") issued proposed assessments for individual income tax, interest, and negligence penalty for the tax years 2004, 2005, and 2006. Taxpayer protests the proposed assessment of interest and negligence penalty. Taxpayer did not request an administrative hearing. This Letter of Findings is written based on the materials in the file. Further facts will be supplied as required.

**I. Income Tax–Individual.**

**DISCUSSION**

The Department issued proposed assessments and the ten (10) percent negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty and interest. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

With regard to interest, the Department refers to IC § 6-8.1-10-1, which states in relevant part:

(a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

...

(e) The department may not waive the interest imposed under this section.

Since Taxpayer incurred a deficiency upon a determination by the Department, Taxpayer is subject to interest on the nonpayment, as provided by IC § 6-8.1-10-1(a). The Department may not waive interest under IC § 6-8.1-10-1(e).

With regard to the penalty, 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). Taxpayer has not affirmatively established that her failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2](#)(c). Taxpayer has not met the burden imposed by IC § 6-8.1-5-1(c).

**FINDING**

Taxpayer's protest is denied.

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