

**Letter of Findings Number: 08-0522P
Negligence Penalty
For the Year 2005**

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ISSUE

I. Tax Administration – Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#); Treas. Reg. 1.1033(a)-2.

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer's business suffered a casualty loss in the summer of 2004 when the business' building was struck by lightning and caught fire. Taxpayer received insurance proceeds in late 2005 to replace the damaged/lost property and equipment. Taxpayer realized a gain on the casualty loss. As allowed under federal law Taxpayer deferred recognition of the gain for two years. Taxpayer ultimately did not reinvest the money in his business. In 2008, Taxpayer filed an amended 2005 Indiana income tax return that recognized the gain. Taxpayer also calculated and paid interest on the income when he filed the amended return.

Taxpayer was subsequently assessed a penalty for purported late payment of income tax. Taxpayer protested the penalty. Taxpayer was afforded the opportunity of having a hearing on his protest, but did not so avail himself. This Letter of Findings is based on information in Taxpayer's file. Additional information will be provided as necessary.

I. Tax Administration – Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of a penalty for purported 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. 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.

In this case, Taxpayer initially elected to defer reporting the gain, as allowed by Treas. Reg. § 1.1033(a)-2, because he intended to reinvest the insurance proceeds in his business within two years after the end of 2005. For myriad reasons, by the end of 2007 Taxpayer had not reinvested the insurance proceeds in his business. Under Treas. Reg. § 1.1033(a)-(2)(c)(2) Taxpayer was then required to amend his 2005 federal income tax return to report the gain. Taxpayer also timely amended his 2005 Indiana income tax return to reflect the change in his 2005 Indiana adjusted gross income. Taxpayer calculated and paid interest on that additional income when he filed the amended Indiana return.

Taxpayer has shown reasonable cause to justify waiver of the negligence penalty.

FINDING

Taxpayer's protest is sustained in that the assessment of negligence penalty is waived. A supplemental audit should determine whether Taxpayer remitted sufficient interest, or whether Taxpayer owes additional interest on the 2005 income from the insurance proceeds.

Posted: 12/17/2008 by Legislative Services Agency

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