

Letter of Findings Number: 08-0538P
Individual Income Tax
For the Calendar Year 2007

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ISSUE

I. Tax Administration—Estimated Tax Penalty.

Authority: IC § 6-3-4-4.1; IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of an underpayment of estimated tax penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana resident. Taxpayer filed a calendar year individual income tax return for the year 2007 with over \$12,000 of tax liability. Taxpayer submitted no estimated tax payments for the 2007 tax year and was assessed an underpayment of estimated tax penalty. Taxpayer protested the assessment of penalty, and this Letter of Finding results.

I. 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 the 2007 tax year. The Department refers to IC § 6-3-4-4.1(b)-(c), which provides for the penalty prescribed by [IC 6-8.1-10-2.1](#)(b) to be assessed by the department on every individual failing to make the sufficient amount of estimated tax payments. Therefore, pursuant to IC § 6-8.1-10-2.1(b) Taxpayer was assessed a penalty equal to ten percent of the tax due.

Under IC § 6-8.1-10-2.1(d), the Department may waive the underpayment of estimated tax penalty "if a person subject to the penalty imposed under this section can show that its failure to... pay... was due to reasonable cause and not due to willful neglect." Further, the Indiana Administrative Code, [45 IAC 15-11-2](#) 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.

Under IC § 6-8.1-5-1(c), "[t]he burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Taxpayer has argued for a penalty waiver asserting a variety of objections including a payment of the tax with the timely filed 2007 return, Taxpayer's owing little tax in the previous tax years resulting in a lack of knowledge of the need to make estimated payments, and a sale of property in 2007 resulting in the taxes due. However, a review of Taxpayer's history shows that Taxpayer had made an estimated payment in the 2006 tax year, in which the tax due was over \$7,000. Moreover, at issue is Taxpayer's failure to make estimated payments and not Taxpayer's income tax return filing date or the payment that was included with the return. Furthermore, the Department finds that Taxpayer did not act with reasonable care and was inattentive to its tax duties. Inattention constitutes negligence and negligence is subject to penalty.

Accordingly, Taxpayer has not provided sufficient grounds in its protest to justify the Department's waiver of penalty.

FINDING

Taxpayer's protest is respectfully denied.

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