

**Letter of Findings Number: 08-0579P
Negligence Penalty
For Tax Year 2006**

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ISSUE

I. Tax Administration–Negligence Penalty.

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

Taxpayer protests imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer operates a business in Indiana. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer owed corporate income tax, interest, and negligence penalty. Taxpayer protests the imposition of ten percent negligence penalty. At hearing, Taxpayer stated that it had difficulties communicating with the Department and discussed several different taxes including corporate income tax. Ultimately, Taxpayer was protesting one penalty relating to corporate income tax for 2006. A review of the Department's records shows that this is Taxpayer's only active liability. Taxpayer also requested a seven-year review of its penalties and interest. The scope of a Letter of Findings is limited to the specific liability which is being protested. Therefore, this Letter of Findings will only discuss the proposed assessment for penalty in 2006. Further facts will be supplied as required.

I. Tax Administration–Negligence Penalty.

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty for the tax period in question. Taxpayer protests the imposition of penalty and interest. Under IC § 6-8.1-10-1, the Department may not waive interest. Taxpayer states that it had difficulty communicating with the Department which resulted in confusion for both parties. Taxpayer believes that the proposed assessments resulted from the mutual confusion. In the course of the administrative hearing, Taxpayer provided substantial documentation to establish that there was miscommunication by both parties.

The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;

...

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.

(Emphasis added.)

[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 an assessment 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). While there were miscommunications by both parties in this case, Taxpayer has established that it acted reasonably in attempting to comply with the Department's requirements. However, now that Taxpayer has gone through the audit and hearing process, it is now aware of the Department's requirements in these matters. For the instant protest, Taxpayer has established that its failure to pay the tax in question in a timely manner was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest is sustained.

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