

Letters of Findings Number: 08-0612P, 08-0615P, 08-0618P
Corporate Income Tax-Penalty
For the Tax Years 2002-2007 (618) and 2003-2007 (612, 615)

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration–Penalty.

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

Taxpayers protest the imposition of the penalty for failure to file corporate tax returns.

STATEMENT OF FACTS

Taxpayers are S corporations. Taxpayers did not file their corporate income tax returns for years 2002 (for one corporation), 2003, 2004, 2005, 2006, and 2007 in a timely manner. Taxpayers did not owe a tax liability; however, because the returns were not filed in a timely manner, Taxpayers were assessed a penalty for late filing.

The Indiana Department of Revenue ("Department") sent a letter to Taxpayers stating that Taxpayers could request a hearing by replying to the letter within twenty (20) days of the letter. Taxpayers did not reply to the Department's letter. Due to Taxpayers' failure to reply, this Letter of Findings is written based on the information in Taxpayers' protest file and other Department records relating to Taxpayers.

I. Tax Administration–Penalty.

DISCUSSION

Taxpayers protest the imposition of a \$250 per year penalty for failure to file corporate income tax returns in a timely manner. The returns showed no liability; however, the returns were filed after the due date for the returns.

IC § 6-8.1-10-2.1(g) provides:

A person who fails to file a return for a listed tax that shows no tax liability for a taxable year, other than an information return (as defined in section 6 of this chapter), on or before the due date of the return shall pay a penalty of ten dollars (\$10) for each day that the return is past due, up to a maximum of two hundred fifty dollars (\$250).

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(d). 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.

Taxpayers failed to file returns for the year in question despite having been in business for several years. Taxpayers have not presented reasonable cause to justify penalty waiver for the years in question.

FINDING

Taxpayers' protests are denied.

Posted: 03/25/2009 by Legislative Services Agency
An [html](#) version of this document.