

Letter of Findings Number: 08-0685P
Corporate Income Tax
For the Period Ending December 31, 2004

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ISSUES

I. Tax Administration–Penalty.

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

Taxpayer protests the imposition of a late payment penalty on its tax liability.

II. Tax Administration–Interest.

Authority: IC § 6-8.1-10-1.

Taxpayer protests the imposition of interest on its tax liability.

STATEMENT OF FACTS

Taxpayer is a corporation. For 2004, Taxpayer did not file its corporate income tax return nor paid its corporate income tax to the Department on or prior to the due date for the return and payment. Subsequently, Taxpayer filed its 2004 corporate income tax return. The Department assessed penalty and interest with regards to the late-filed return, which Taxpayer protested.

I. Tax Administration–Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to file its corporate income tax return and remit its tax in a timely manner.

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.

Taxpayer has provided sufficient information to conclude that it acted with reasonable care. Thus, Taxpayer's penalty for late filing and payment of tax should be waived.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration–Interest.

DISCUSSION

Taxpayer protests the imposition of interest on its payment. Under IC § 6-8.1-10-1(e), interest cannot be waived.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's penalty protest is sustained and Taxpayer's interest protest is denied.

Posted: 04/29/2009 by Legislative Services Agency

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