

**Letter of Findings: 08-0395**  
**Individual Income Tax**  
**For the Year 1996 through 2006**

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**ISSUES**

**I. Individual Income Tax – Imposition – Non-filer.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-5-4; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of Indiana income tax liabilities from 1996 through 2006.

**II. Tax Administration – Negligence Penalty.**

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

Taxpayer protests the imposition of the ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is an Indiana resident and a sole proprietor operating an auto repair business near Indianapolis. Pursuant to an investigation, the Indiana Department of Revenue ("Department") discovered that, in every transaction, Taxpayer accepts "cash only, no checks and no credit" as payment from his customers. Taxpayer did not maintain any ledgers, register tapes, summaries, sales journals, bank statements, or other records. The only available documentation was Taxpayer's invoices. However, Taxpayer only had sales invoices from three years, 2005, 2006, and 2007. Additionally, those invoices were not pre-numbered. Taxpayer dated and itemized each transaction in those invoices, but the invoices were not signed by his customers. Those invoices' dates were very far apart and showed that Taxpayer only had six customers in 2005 and one customer in 2007. For the 2006 tax year, Taxpayer had an average of six customers per month. The Department also discovered that Taxpayer had not filed his federal and Indiana individual income tax returns for at least eleven years—from 1996 through 2006. The Department assessed Taxpayer Indiana individual income tax for the years in question based on the best information available to the Department at the time of the investigation. Taxpayer protested the assessment. A hearing was held. The Letter of Findings ensues. Additional facts will be provided as necessary.

**I. Individual Income Tax – Imposition – Non-filer.**

**DISCUSSION**

In the absence of Taxpayer's own records, the Department assessed Taxpayer individual income tax based on the Automotive Service Technicians and Mechanic's mean annual income for the metropolitan area of Indianapolis from the Bureau of Labor Statistics. Taxpayer was entitled to one personal exemption for those years because Taxpayer stated that his spouse filed separate income tax returns. Taxpayer protested that his income was less than what the Department deemed.

IC § 6-8.1-5-1(b), in part, states "[i]f the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest." All tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

At the request of Taxpayer's representative, Taxpayer, a non-filer, was permitted to have more time after the hearing to submit documentation to substantiate his claim. Taxpayer's representative submitted a summary along with Taxpayer's original invoices and original utility bills to claim deductions. Taxpayer also provided a copy of his 2006 U.S. Individual Income Tax Return, Form 1040, signed by Taxpayer and dated May 19, 2008.

IC § 6-8.1-5-4, in pertinent part, provides,

(a) Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

(b) A person must retain the books and records described in subsection (a), and any state or federal tax return that the person has filed:

(1) For an unlimited period, if the person fails to file a return or receives notice from the department that the person has filed a suspected fraudulent return, or an unsigned or substantially blank return.

Taxpayer's documentation failed to substantiate Taxpayer's claim. As a sole proprietor, Taxpayer works on a "cash only" basis, and posts a sign stating "cash only, no checks or credit" at his establishment. Taxpayer

submitted unnumbered invoices along with a summary document. However, Taxpayer did not submit any documentation, such as ledgers, sales journals, bank statements or other records to corroborate with those invoices. Those invoices were not signed by Taxpayer's customers. Given the facts mentioned above, Taxpayer has not met his burden of demonstrating that the proposed assessment is wrong.

**FINDING**

Taxpayer's protest is respectfully denied.

**II. Tax Administration – Penalty.**

**DISCUSSION**

Taxpayer also protests the assessment of the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1, the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a tax return;
- (2) fails to pay the full amount of tax shown on the tax return;
- (3) fails to remit in a timely manner the tax held in trust for Indiana (e.g., a sales tax); or
- (4) fails to pay a tax deficiency determined by the Department to be owed by a taxpayer.

[45 IAC 15-11-2](#)(b) further 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.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, as follows:

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.

The facts in the present case show that Taxpayer is a non-filer for at least eleven years. The Department could have imposed a one hundred percent penalty for Taxpayer's compliance failure. Taxpayer failed to provide sufficient documentation establishing that its failure to file Indiana individual income tax for the years in question was due to reasonable cause and not due to negligence. Thus, Taxpayer's protest on the imposition of the negligence penalty is respectfully denied.

**FINDING**

Taxpayer's protest on the imposition of the negligence penalty is respectfully denied.

**SUMMARY**

For the reasons discussed above, Taxpayer's protest on the imposition of individual income tax from 1996 through 2006 is respectfully denied. Taxpayer's protest on the imposition of the negligence penalty is also respectfully denied.

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