

**Letter of Findings Number: 09-0079P
Negligence Penalty
For Tax Year 2007**

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ISSUE

I. Tax Administration–Negligence Penalty.

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

Taxpayers protest imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayers are non-resident taxpayers with Indiana-sourced income. Taxpayers had a federal extension regarding their 2007 federal income tax. Taxpayers filed their Indiana 2007 income tax return in November of 2008. Taxpayers did not pay at least ninety percent of their 2007 Indiana income taxes by the original due date in April, 2008, therefore Indiana Department of Revenue ("Department") issued a proposed assessment for penalty. Taxpayers protest the imposition of ten percent negligence penalty and state that they have always paid their Indiana income taxes in a timely manner. Taxpayers did not request an administrative hearing. This Letter of Findings was written based on the information in the protest file. Further facts will be supplied as required.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayers protest the imposition of penalty. Taxpayers state that they received an extension for their federal 2007 income tax return and that they filed and paid their Indiana 2007 income taxes one month after the federal extension date. Taxpayers believe that this was reasonable and that penalty should be waived.

The relevant statute regarding filing extensions is IC § 6-8.1-6-1, which states:

- (a) If a person responsible for filing a tax return is unable to file the return by the appropriate due date, he may petition the department, before that due date, for a filing extension. The person must include with the petition a payment of at least ninety percent (90[percent]) of the tax that is reasonably expected to be due on the due date. When the department receives the petition and the payment, the department shall grant the person a sixty (60) day extension.
- (b) If a person responsible for filing a tax return has received an extension of the due date and is still unable to file the return by the extended due date, he may petition the department for another extension. The person must include in the petition a statement of the reasons for his inability to file the return by the due date. If the department finds that the person's petition is proper and that the person has good cause for requesting the extension, the department may extend the person's due date for any period that the department deems reasonable under the circumstances. The department may allow additional, successive extensions if the person properly petitions for the extension before the end of his current extension period.
- (c) If the Internal Revenue Service allows a person an extension on his federal income tax return, the corresponding due dates for the person's Indiana income tax returns are automatically extended for the same period as the federal extension, plus thirty (30) days. However, the person must pay at least ninety percent (90[percent]) of the Indiana income tax that is reasonably expected to be due on the original due date by that due date, or he may be subject to the penalties imposed for failure to pay the tax.
- (d) Any tax that remains unpaid during an extension period accrues interest at a rate established under [IC 6-8.1-10-1](#) from the original due date, but that tax will not accrue any late payment penalties until the extension period has ended.

(Emphasis added.)

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, Taxpayers did not pay at least ninety percent of the final amount of income taxes due by the original due date. The Department determined that this constituted negligence under [45 IAC 15-11-2](#)(b), and so imposed penalty under IC § 6-8.1-10-2.1(a). Taxpayers have provided adequate explanation to establish that there were unusual circumstances which prevented them from knowing the total amount due by the original due date. Taxpayers have established that the failure to pay sales and use taxes was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2](#)(c).

FINDING

Taxpayers' protest is sustained.

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