

Letter of Findings Number: 09-0266
Individual Income Tax
For the Year 2007

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ISSUES

I. Individual Income Tax – Imposition.

Authority: IC § 6-3-3-12.

Taxpayer protests the assessment of individual income tax.

II. Tax Administration–Penalty.

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

Taxpayer protests the imposition of the ten percent late payment penalty.

STATEMENT OF FACTS

Taxpayer is an individual. Prior to December 2007, Taxpayer had not established an account with the Indiana College Choice 529 Plan ("529 Plan"). Taxpayer mailed his account registration and contributed a \$5,000 check to the 529 Plan Administrator.

On Taxpayer's 2007 individual income tax return, Taxpayer claimed a \$1,000 credit based on the above-referenced contribution. The Indiana Department of Revenue ("Department") disallowed the credit and assessed additional tax that would have been due absent the credit. Taxpayer protested the resulting assessment and penalty, the Department conducted an administrative hearing, and this Letter of Findings results.

I. Individual Income Tax – Imposition.

DISCUSSION

Taxpayer protests the disallowance of the credit for contribution to the 529 Plan for 2007. In particular, Taxpayer asserts that the credit was made prior to the end of calendar year 2007.

IC § 6-3-3-12(i) states:

A taxpayer is entitled to a credit against the taxpayer's adjusted gross income tax imposed by [IC 6-3-1](#) through [IC 6-3-7](#) for a taxable year equal to the least of the following:

- (1) Twenty percent (20 [percent]) of the amount of the total contributions made by the taxpayer to an account or accounts of a college choice 529 education savings plan during the taxable year.
- (2) One thousand dollars (\$1,000).
- (3) The amount of the taxpayer's adjusted gross income tax imposed by [IC 6-3-1](#) through [IC 6-3-7](#) for the taxable year, reduced by the sum of all credits (as determined without regard to this section) allowed by [IC 6-3-1](#) through [IC 6-3-7](#).

However, in order to qualify for the credit, Taxpayer was required to provide information to substantiate that the necessary contribution was made in fact made in 2007. Taxpayer's information includes a check written on December 30, 2007, and paperwork signed on that same day. Taxpayer has substantiated that he made a contribution to an account eligible for the tax credit. Nevertheless, Taxpayer's documentation does not show that the deposit was made into the account during 2007. Thus, Taxpayer's contribution was not eligible for a tax credit in 2007; however, Taxpayer's contribution is treated as a calendar year 2008 contribution.

FINDING

Taxpayer's protest is denied.

II. Tax Administration–Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent late payment penalty on Taxpayer's failure to remit the proper amount of adjusted gross income tax.

Under IC § 6-8.1-6-1.

- (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.

Thus, a taxpayer who makes a payment of at least ninety percent of the ultimate tax liability for a year prior to the due date for that year's return is not subject to underpayment penalties unless the taxpayer fails to pay the difference at or prior to the extension deadline. If the payment is less than ninety percent of the ultimate tax liability for a year, the taxpayer is potentially subject to penalties.

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.

Even though Taxpayer did not pay ninety percent of his finally-determined liability prior to the original due date for payment, Taxpayer would have met the ninety percent required payment had the Department not disallowed Taxpayer's claimed 529 Plan credit. Taxpayer acted reasonably by claiming the 529 Plan credit on his 2007 individual income tax return, and by extension paid ninety percent of the tax he reasonably believed to be due as of the original due date of his 2007 individual income tax return; therefore, with regard to payments due prior to October 15, 2008, Taxpayer has established reasonable cause for penalty waiver.

Furthermore, with regard to the balance due after October, 15, 2008, Taxpayer has established reasonable cause for claiming the 529 Plan credit on his tax return, and thus is sustained with regards to any penalties based on amounts due after October 15, 2008.

In conclusion, because Taxpayer acted with reasonable care in his filing of his individual income tax return and payment of taxes, Taxpayer's protest of the penalty is sustained.

FINDING

Taxpayer's protest is sustained.

CONCLUSION

Taxpayer's protest of the tax assessment is denied. Taxpayer's protest of the penalty assessment is sustained.

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