

**Letter of Findings Number: 09-0104P
Partnership Income Tax-Penalty
For the Tax Years 2006 and 2007**

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ISSUE

I. Tax Administration–Penalty.

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

Taxpayer protests the imposition of the penalty for failure to file partnership tax returns.

STATEMENT OF FACTS

Taxpayer is a partnership. Taxpayer did not file its partnership income tax returns for 2006 and 2007 in a timely manner. Taxpayer did not owe a tax liability; however, because the return was not filed in a timely manner, Taxpayer was assessed a penalty for late filing.

I. Tax Administration–Penalty.

DISCUSSION

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

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.

Taxpayer asserts that it closed in early 2006. For 2006, Taxpayer argues that it "had difficulty in locating its records at tax time." For 2007, Taxpayer states that it was unaware of its filing obligations, notwithstanding that Taxpayer had not closed its business. These arguments do not demonstrate reasonable cause. Further, Taxpayer's past compliance history—Taxpayer had three other penalty assessments for late filing of returns and more than fifty overall billings for various taxes and penalties—does not demonstrate ordinary business care and prudence.

FINDING

Taxpayer's protest is denied.

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