

**Letter of Findings Number: 08-0717P
Corporate Income Tax
For Tax Years 2007-2008**

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ISSUES

I. Tax Administration–Negligence Penalty.

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

Taxpayer protests the imposition of a ten percent negligence penalty.

II. Tax Administration–Estimated Tax Penalty.

Authority: IC § 6-3-4-4.1; IC § 6-8.1-10-2.

Taxpayer protests the imposition of the underpayment of estimated tax penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation. The Indiana Department of Revenue ("Department") issued proposed assessments for additional adjusted gross income tax, negligence penalties, underpayment of estimated taxes penalties, and interest for the 2007 and 2008 tax years. Taxpayer requests abatement of the penalties.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the negligence penalty. The Department refers to IC § 6-8.1-10-2.1(a)(3), which provides "if a person... incurs, upon examination by the department, a deficiency that is due to negligence... the person is subject to a penalty."

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).

Further, the Indiana Administrative Code, [45 IAC 15-11-2](#)(b) provides:

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 the negligence penalty as provided in [45 IAC 15-11-2](#)(c), 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.

Taxpayer has provided sufficient information to establish that its failure to pay the deficiency was not due to Taxpayer's negligence, but was due to reasonable cause as required by [45 IAC 15-11-2](#)(c).

FINDING

Taxpayer's protest to the imposition of the negligence penalty is sustained.

II. Tax Administration–Estimated Tax Penalty.

DISCUSSION

Taxpayer protests the imposition of the underpayment of estimated tax penalty. IC § 6-3-4-4.1, in relevant part, provides:

- (c) Every corporation subject to the adjusted gross income tax liability imposed by this article shall be

required to report and pay an estimated tax equal to the lesser of:

- (1) twenty-five percent (25%) of such corporation's estimated adjusted gross income tax liability for the taxable year; or
- (2) the annualized income installment calculated in the manner provided by Section 6655(e) of the Internal Revenue Code as applied to the corporation's liability for adjusted gross income tax.

A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated adjusted gross income tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing estimated adjusted gross income tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year. The department shall prescribe the manner and forms for such reporting and payment.

(d) The penalty prescribed by [IC 6-8.1-10-2.1](#)(b) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:

- (1) the annualized income installment calculated under subsection (c); or
- (2) twenty-five percent (25[percent]) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25%) of the corporation's final adjusted gross income tax liability for such taxable year.

A penalty is imposed under IC § 6-3-4-4.1(c) for the underpayment of estimated tax when a taxpayer fails to make the required estimated payments. Under IC § 6-3-4-4.1(d), the penalty is assessed on the amount by which the taxpayer underestimated its tax liability. While IC § 6-3-4-4.1(c) incorporates by reference the ten-percent negligence rate under IC § 6-8.1-10-2.1(b), it does not incorporate the negligence standard. Rather, IC § 6-3-4-4.1(d) simply states that the penalty "shall be assessed by the department on corporations failing to make payments as required...." Since Taxpayer failed to make the required estimated payments, Taxpayer is subject to penalty. Taxpayer invites the Department to abate the underpayment of estimated tax penalty, but has not provided an equitable or statutory basis upon which to abate the penalty. Therefore, the Department must decline the opportunity to do so.

FINDING

Taxpayer's protest to the imposition of the underpayment of estimated tax penalty is denied.

CONCLUSION

Taxpayer's protest to the imposition of the negligence penalty is sustained, but Taxpayer's protest to the imposition of the underpayment of estimated tax penalty is denied.

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