

Letter of Findings Number: 09-0233P
Income Tax
For Tax Year 2008

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ISSUE

I. Tax Administration–Negligence Penalty.

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

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a corporation. Taxpayer protests the imposition of the ten percent negligence penalty on underpayment of 2008 income tax. Taxpayer underpaid on its Indiana corporate income tax for 2008. The Indiana Department of Revenue ("Department") issued a proposed assessment for ten percent negligence penalty. Taxpayer protests the proposed assessment but did not request a hearing. The Letter of Findings was written based on the materials in the file. Further facts will be supplied as required.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of a ten percent negligence penalty on an underpayment it made on its Indiana corporate income tax for 2008. Taxpayer states that it had filed for an extension of its federal filing and that Indiana recognizes the federal extension. Taxpayer also states that the reason for the federal extension was that it did not have all of the data required to file accurately. Taxpayer believes that these circumstances are sufficient to warrant waiver of penalty.

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

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.

Next, the Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

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.

Also, [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, Taxpayer states that it used the best information available to it. The Department notes that Taxpayer has not established that it paid at least ninety percent of the Indiana income tax that was reasonably expected to be due on the original due date. Taxpayer states that it did not have the information necessary to make an accurate payment, but that it made accurate filings and payments once it did have the information.

The Department cannot agree with Taxpayer that this constituted ordinary business care. Taxpayer might not have known the precise numbers, but the ninety percent threshold provided in IC § 6-8.1-6-1(c) is a reasonable amount to meet. Also, it is a minimum threshold. Taxpayer could have erred on the side of caution and paid over the ninety percent, particularly when it acknowledges that it did not have reliable numbers to work with. Taxpayer

did not do so. Therefore, Taxpayer's actions do not constitute reasonable cause, as provided by [45 IAC 15-11-2\(c\)](#). Therefore, penalty was properly imposed under IC § 6-8.1-10-2.1

FINDING

Taxpayer's protest is denied.

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