

Letter of Findings: 09-0668P
Corporate Income Tax
For the Years 2005 through 2008

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ISSUE

I. Failure to File Penalty – Corporate Income Tax.

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

Taxpayer argues that penalties imposed for failing to file income tax returns should be abated because taxpayer did not realize it had to pay income taxes.

STATEMENT OF FACTS

Taxpayer is a construction company located in Indiana. Taxpayer did not file tax returns for the years 2005, 2006, 2007, and 2008. As a result, the Department of Revenue (Department) imposed four penalties of \$250 each. Taxpayer disagreed and submitted a protest to that effect. An administrative hearing was conducted during which taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Failure to File Penalty – Corporate Income Tax.

Taxpayer was assessed a total of \$1,000 in penalties for failing to file income tax returns. The penalties were assessed pursuant to IC § 6-8.1-10-2.1(g) which states as follows: "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)."

The standard for waiving the negligence penalty is given at [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 explains that tax returns were no longer filed after 2004 because of the repeal of the Gross Income Tax provisions in 2003. Taxpayer's representative explains that, "[He] was told many times in newspaper articles and on television that the Indiana Gross income tax was being phased out." Taxpayer maintains that the Department should have contacted its representative and that "a computer error by someone in the tax department" is responsible for the Department's failure to promptly notify taxpayer that it was required to file income tax returns.

Although taxpayer's failure to file tax returns for four years may have been inadvertent, the taxpayer has failed to establish that it exercised the degree of "ordinary business care and prudence" necessary to justify abating the penalties. In addition, the Department is unable to agree that it is under an obligation to individually notify taxpayer of its business taxpayer's obligations.

FINDING

Taxpayer's protest is respectfully denied.

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