

**Letter of Findings Number: 09-0574
Individual Income Tax
For the Years 2003-2007**

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ISSUES

I. Individual Income Tax–Income Determination.

Authority: IC § 6-3-2-2.8; IC § 6-8.1-5-1; IC § 6-8.1-5-4.

Taxpayer protests the redetermination of its income.

II. Tax Administration–Negligence Penalty.

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

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a shareholder of three entities that elected to file federal income tax returns as S corporations. The S corporations are doing business in Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer's S corporations for sales and use tax for the 2003 through 2007 tax years. The Department determined that the S corporations, and therefore Taxpayer, underreported income for the 2003 through 2007 tax years and assessed additional adjusted gross income tax, interest, and penalties against for the 2003 through 2007 tax years. Taxpayer protested the redetermination of its income. The Department conducted an administrative hearing and this Letter of Findings results.

I. Individual Income Tax–Income Determination.

DISCUSSION

Taxpayer protests the redetermination of its income for the 2003 through 2007 tax years. The S corporations themselves are not subject to Indiana income tax under IC § 6-3-2-2.8(2); however, the additional income passes through to the shareholder(s). Taxpayer, as a shareholder of each of the S corporations, is liable for the additional income tax due.

Under IC § 6-8.1-5-1(b):

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

IC § 6-8.1-5-1(c) provides:

If the person has a surety bond guaranteeing payment of the tax for which the proposed assessment is made, the department shall furnish a copy of the proposed assessment to the surety. The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

IC § 6-8.1-5-4(a) provides:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Taxpayer provided records and other information which it claimed demonstrated that the tax assessments were incorrect.

Notwithstanding the volume of information provided by Taxpayer, Taxpayer's argument fails on two grounds. First, Taxpayer's information does not consist of source documents or other documents that rebut the Department's determination. Second, Taxpayer did not explain how the documentation demonstrated that the Department's determination of Taxpayer's income was erroneous. Thus, Taxpayer has not met its burden of demonstrating that the Department's determination was not correct.

Taxpayer's protest relates to the determination of additional receipts determined under the Letters of Findings 02-20090516, 02-20090527, and 02-20090576. Based on the findings of the Letters of Findings 02-20090516, 02-20090527, and 02-20090576, the Department correctly determined Taxpayer's adjusted gross income.

FINDING

Taxpayer's protest is denied.

II. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on the adjusted gross income taxes imposed as a result of the Department's audit.

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.

Taxpayer has not established the "reasonable cause" necessary for penalty waiver.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protest is denied on all issues.

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