

Letter of Findings Number: 09-0380P
Income Tax
For Tax Years 2006-07

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ISSUE

I. Tax Administration—Late Payment Penalty.

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

Taxpayer protests the imposition of a ten percent late payment penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state insurance company. Taxpayer protests the imposition of the ten percent late payment penalties for 2006 and 2007. Taxpayer filed premium tax returns with the Indiana Department of Insurance ("DOI"), but did not file adjusted gross income tax returns with the Indiana Department of Revenue ("Department"). The Department issued an initial denial of Taxpayer's request for abatement of these penalties and Taxpayer filed this protest. Taxpayer 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—Late Payment Penalty.

DISCUSSION

Taxpayer protests the imposition of late payment penalties for the tax years 2006 and 2007. Taxpayer states that it had been filing premium tax returns with the DOI, but was confused about its duties regarding Indiana adjusted gross income tax. Taxpayer therefore requested and received a Revenue Ruling from the Department. The Revenue Ruling explained that Taxpayer was required to file Indiana adjusted gross income tax returns, and to remit any related Indiana adjusted gross income tax. Taxpayer states that, upon receipt of the Revenue Ruling, it immediately filed the appropriate returns. Taxpayer states that it is required to file two returns in Indiana, one to the DOI and one to the Department, and that the complexity of federal rules and their interplay with Indiana's taxation provisions regarding insurance companies makes the impositions of penalties unfair. Taxpayer believes that these circumstances are sufficient to warrant waiver of penalty.

The Department refers to IC § 6-8.1-10-2.1, which states:

(a) If a person:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department;

the person is subject to a penalty.

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10 [percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

(c) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

(e) A person who wishes to avoid the penalty imposed under this section must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement

containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.

(f) The department shall adopt rules under [IC 4-22-2](#) to prescribe the circumstances that constitute reasonable cause and negligence for purposes of this section.

(g) 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).

(h) A corporation which otherwise qualifies under [IC 6-3-2-2.8\(2\)](#) but fails to withhold and pay any amount of tax required to be withheld under [IC 6-3-4-13](#) shall pay a penalty equal to twenty percent (20 [percent]) of the amount of tax required to be withheld under [IC 6-3-4-13](#). This penalty shall be in addition to any penalty imposed by section 6 of this chapter.

(i) Subsections (a) through (c) do not apply to a motor carrier fuel tax return.

(j) If a partnership or an S corporation fails to include all nonresidential individual partners or nonresidential individual shareholders in a composite return as required by [IC 6-3-4-12\(h\)](#) or [IC 6-3-4-13\(j\)](#), a penalty of five hundred dollars (\$500) per partnership or S corporation is imposed on the partnership or S corporation. (Emphasis added).

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.

(Emphasis added.)

[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.

Here, Taxpayer waited until after the tax years at issue to request a ruling on its taxable status. Also, while Taxpayer is required to file returns with the DOI and with the Department, the statutes and regulations are, and have been, readily available to the public long before the tax years at issue. Similarly, Taxpayer could have requested a ruling from the Department prior to the tax years at issue. The Department cannot agree with Taxpayer that this constitutes reasonable cause, as provided by [45 IAC 15-11-2\(c\)](#). Ignorance of the listed tax laws and regulations is treated as negligence, as provided by [45 IAC 15-11-2\(b\)](#). Therefore, the penalty was properly imposed.

FINDING

Taxpayer's protest is denied.

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