

**Letter of Findings Number: 09-0767P
Corporate Income Tax-Penalty and Interest
For the Year 2007**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. 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.

II. Tax Administration–Estimated Tax Penalty.

Authority: IC § 6-3-4-4.1.

Taxpayer protests the imposition of the ten percent penalty for failure to make sufficient estimated tax payments during the tax year.

III. Tax Administration–Interest.

Authority: IC § 6-8.1-10-1.

Taxpayer protests the imposition of interest on its tax liability.

STATEMENT OF FACTS

Taxpayer is a C corporation operating in Indiana. For tax year 2006, Taxpayer reported a corporate income tax liability of roughly \$125,000. For tax year 2007, Taxpayer made estimated tax payments totaling roughly \$130,000.

During September 2007, the Internal Revenue Service (IRS) notified Taxpayer that Taxpayer had been selected for an audit for 2005 and 2006. According to Taxpayer, its attorney stated that the issues raised by the IRS for the 2005 and 2006 tax years would cause Taxpayer's 2007 liability to be reduced from Taxpayer's initially projected 2007 liability.

Due to the IRS audit, Taxpayer filed an extension for its 2007 corporate income tax return. Based on the assumed 2007 liability being lower than projected, Taxpayer did not pay additional amounts beyond previous estimated tax payments prior to the April 15, 2008, deadline for payment of taxes.

The IRS audit was not completed prior to the extended deadline for filing Taxpayer's 2007 corporate income tax return. Taxpayer filed its original 2007 Indiana corporate income tax return on September 15, 2008, reporting a liability of \$206,000. Taxpayer paid \$76,000 on September 15, 2008. The Department assessed interest, a late payment penalty of \$7,600, and a \$7,600 penalty for failure to make sufficient estimated payments.

When the 2007 federal corporate income tax return was filed, the IRS included that return in its audit. In March 2009, Taxpayer made an additional tax payment of \$477,000.

In June 2009, the IRS completed its audit of Taxpayer. On September 1, 2009, Taxpayer filed an amended tax return for 2007 reflecting the federal audit adjustments and an unrelated adjustment to Taxpayer's apportionment percentage. The adjustments increased Taxpayer's overall liability to \$703,000. Taxpayer paid \$20,000 on September 1, 2009. However, because of the original \$15,200 in penalties, interest on the ultimately-determined underpayment, and the application of payments by the Department, Taxpayer had an outstanding liability of \$52,000 as of September 1, 2009. Taxpayer protested the interest and penalty assessments, the Department conducted a hearing, and this Letter of Findings results. Additional facts will be supplied as necessary.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty imposed because of Taxpayer's failure to remit the full amount of corporate income tax on or before the due date for payment.

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 established that it acted with reasonable cause when it did not pay the full amount of tax for 2007 prior to the due date for its 2007 tax payment. Therefore, Taxpayer's protest is sustained.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration—Estimated Tax Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent penalty imposed because of Taxpayer's failure to make sufficient estimated tax payments as required pursuant to IC § 6-3-4-4.1(d).

For the first three quarters of 2007, Taxpayer was required to make quarterly payments of roughly \$31,250 for those quarters to not be subject to penalty. Taxpayer's payments for these quarters did not meet that \$31,250 amount, and Taxpayer did not provide sufficient information with regard to why its payments did not meet the amount for these three quarters. Thus, Taxpayer's protest is denied for the first three quarters of 2007.

For the fourth quarter of 2007, Taxpayer paid more than \$31,250 in estimated taxes. Thus, for the fourth quarter of 2007, Taxpayer paid sufficient estimated taxes to prevent this penalty, and thus Taxpayer's protest is sustained.

FINDING

Taxpayer's protest is denied for the first three quarters of 2007 and sustained for the fourth quarter of 2007.

III. Tax Administration—Interest.

DISCUSSION

Taxpayer protests the imposition of interest with respect to its assessment. Even though Taxpayer has presented ample evidence that it would have paid the proper amount of interest had it known its liability in September 2008 and that its delay in payment was due to issues that arose with regard to the IRS audit, the Department's legal discretion is constrained by statute. Under IC § 6-8.1-10-1(e), interest cannot be waived in Taxpayer's protest.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protest is sustained on the negligence penalty. Taxpayer's protest is denied with regard to the estimated tax penalty except with regard to the fourth quarter of 2007. Taxpayer's protest of interest is denied.

Posted: 01/27/2010 by Legislative Services Agency

An [html](#) version of this document.