

**Letter of Findings Number: 09-0818P
Individual Income Tax-Penalty and Interest
For the Year 2005**

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ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#); Murphy v. I.R.S., 460 F.3d 70 (D.C. Cir. 2006), vacated by Murphy v. I.R.S., 2006 WL 4005276 (D.C. Cir. December 22, 2006); Murphy v. I.R.S., 493 F.3d 170 (D.C. Cir. 2007).

Taxpayer protests the imposition of the ten percent negligence penalty.

II. 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 an individual. Taxpayer initially filed his 2005 income tax return and reported a tax liability of \$28,174. Taxpayer paid the liability prior to the April 17, 2006, due date.

On September 29, 2006, Taxpayer filed an amended return seeking an \$18,165 refund. Taxpayer predicated his claim on a federal case, Murphy v. I.R.S., 460 F.3d 70 (D.C. Cir. 2006), holding that certain amounts Taxpayer received were not income. On October 17, 2006, the Department issued Taxpayer an \$18,165 refund.

On December 22, 2006, the court in Murphy vacated its earlier opinion. Murphy v. I.R.S., 2006 WL 4005276 (D.C. Cir. December 22, 2006). On July 3, 2007, the federal appeals court determined that the amounts in question were subject to income tax. Murphy v. I.R.S., 493 F.3d 170 (D.C. Cir. 2007). The court denied a rehearing en banc on September 14, 2007. The United States Supreme Court denied certiorari on April 21, 2008.

On March 26, 2009, the Department issued an assessment for \$22,521 additional tax based on a federal audit of Taxpayer for tax year 2005. The bill was based on a revised Indiana tax liability of \$32,529. The Department issued a penalty assessment of \$432 and an interest assessment of \$3,523. On May 8, 2009, Taxpayer paid the \$22,521; Taxpayer protests the imposition of interest and penalty.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to remit the full amount of individual 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 his 2005 income tax deficiency was the result of reasonable cause. Therefore, Taxpayer's protest of the negligence penalty is sustained.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration–Interest.

DISCUSSION

Taxpayer protests the imposition of interest with respect to his assessment. Taxpayer's interest was computed as follows: Taxpayer originally reported a liability of \$28,174. Taxpayer's finally determined liability for 2005 was \$32,529. The Department assessed interest from April 17, 2006 (the due date of the 2005 return) to May 8, 2009, on an underpayment of \$4,355. This interest totaled \$748.

From October 17, 2006, until May 8, 2009, Taxpayer was underpaid by a further \$18,165. The Department assessed interest only from October 17, 2006, to May 8, 2009, on that \$18,165 was \$2,775.

Taxpayer was underpaid on his account for all periods from the due date of the 2005 income tax return to present. Interest—the time value of money—was assessed on the amount Taxpayer's account was underpaid at the appropriate rate set 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 late-payment penalty. Taxpayer's protest of interest is denied.

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