

**Letter of Findings Number: 09-0819P
Individual Income Tax-Penalty and Interest
For the Year 2007**

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ISSUES

I. Tax Administration–Negligence Penalty.

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

Taxpayers protest the imposition of the ten percent negligence penalty.

II. Tax Administration–Estimated Tax Penalty.

Authority: IC § 6-3-4-4.1.

Taxpayers protest 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.

Taxpayers protest the imposition of interest on their tax liability.

STATEMENT OF FACTS

Taxpayers are a married couple. Taxpayers filed their 2007 tax return and reported a tax underpayment on the return. The Indiana Department of Revenue ("Department") imposed a ten-percent negligence penalty on the unpaid balance, a penalty for failure to make sufficient estimated payments during 2007, and interest on the unpaid balance. Taxpayers protested the interest and penalty assessments and this Letter of Findings results. Additional facts will be supplied as necessary.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayers protest the imposition of the ten percent negligence penalty imposed because of Taxpayers' failure to remit the full amount of 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.

Taxpayers stated that they each suffered severe illnesses during the 2007 tax year and continuing through to the due date for their 2007 income taxes. Prior to the 2007 tax year, Taxpayers had made all required tax payments since at least 1994. Because of their payment history and extraordinary illnesses during 2007, Taxpayers have shown that they acted with reasonable cause when they did not pay the full amount of tax for 2007 prior to the due date for its 2007 tax payment. Therefore, Taxpayers' protest is sustained.

FINDING

Taxpayers' protest is sustained.

II. Tax Administration—Estimated Tax Penalty.

DISCUSSION

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

Taxpayers did not make estimated payments of tax during the 2007 tax year despite reporting 2006 taxes in excess of \$23,000. Even though Taxpayers each suffered severe illnesses during the 2007 tax year, IC § 6-3-4-4.1 does not provide for a possible penalty waiver unless the taxpayer "can reasonably be expected" to have an estimated tax liability of less than \$400 (now \$1,000). Taxpayers have not provided information to conclude that their 2007 tax liability could "reasonably be expected" to be less than \$400. Therefore, Taxpayers' protest is denied.

FINDING

Taxpayers' protest is denied.

III. Tax Administration—Interest.

DISCUSSION

Taxpayers protest the imposition of interest with respect to its late payment of tax. For taxes unpaid by the due date for payment, [IC 6-8.1-10-1](#)(b) provides for the imposition of interest. Notwithstanding Taxpayers' circumstances, IC § 6-8.1-10-1(e), provides that the Department cannot waive interest even if reasonable cause otherwise exists for penalty waiver.

FINDING

Taxpayers' protest is denied.

CONCLUSION

Taxpayers' protest is sustained on the negligence penalty. Taxpayers' protest is denied with regard to the estimated tax penalty. Taxpayers' protest of interest is denied.

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