

**Letter of Findings Number: 09-0741P
Corporate Income Tax-Penalty
For the Tax Year 2007**

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ISSUE

I. Tax Administration–Penalty.

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

Taxpayer protests the imposition of the penalty for failure to file corporate income tax returns.

STATEMENT OF FACTS

Taxpayer is an S Corporation. Taxpayer did not file its 2007 Indiana corporate income tax return in a timely manner. Taxpayer was assessed a penalty for late filing, which Taxpayer protested.

In addition to the protested penalty, Taxpayer has been assessed a separate penalty for failure to file its 2006 Indiana corporate income tax return in a timely manner as well as a third penalty under IC § 6-8.1-10-2.1(h) for failure to withhold income taxes on behalf of its nonresident shareholder for 2005. Those penalties were not protested by Taxpayer in a timely manner and will not be addressed further.

I. Tax Administration–Penalty.

DISCUSSION

Taxpayer protests the imposition of a \$250 per year penalty for failure to file a tax return in a timely manner. The return showed no liability; however, the return was filed after the due date for the return.

IC § 6-8.1-10-2.1(g) provides:

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).

Penalty waiver is permitted if the taxpayer shows that the failure to file a tax return in a timely manner was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1(d). 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 stated that it was unable to file its 2007 corporate income tax return due to the burdens placed upon it by two former employees and issues that resulted from their employment by Taxpayer. Taxpayer provided evidence to substantiate the issues arising from the former employees. Based upon the information provided, Taxpayer demonstrated that it acted reasonably with regard to filing its 2007 Indiana corporate income tax return.

FINDING

Taxpayer's protest is sustained.

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