

**Letter of Findings Number: 09-0757  
Corporate Income Tax-Penalty and Interest  
For the Years 1999-2003**

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**ISSUE**

**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 § 6-8.1-9-2.

Taxpayer protests the imposition of interest on its tax liability.

**STATEMENT OF FACTS**

Taxpayer is a corporation doing business in Indiana. On or about April 30, 2002, Taxpayer filed a refund claim for the fiscal years ending October 31, 1999, and October 31, 2000. ("1999 tax year" and "2000 tax year," respectively) The Indiana Department of Revenue ("Department") audited Taxpayer for those years as well as the fiscal years ending October 31, 2001, October 31, 2002, and March 31, 2003 ("2001 tax year," "2002 tax year," and "2003 tax year," respectively).

The Department determined that it owed Taxpayer a refund for the 1999 and 2000 tax years. The Department also determined that Taxpayer owed additional tax for the 2001, 2002, and 2003 tax years. The Department issued a refund (plus interest) for 1999 and 2000 tax years, and issued assessments (plus interest) for the 2001, 2002, and 2003 tax years. The interest computations for each year were determined separately. For the 2002 tax year, the Department imposed a negligence penalty and a penalty for failure to make sufficient estimated tax payments. For the 2003 tax year, the Department imposed a penalty for failure to make sufficient estimated tax payments.

Taxpayer protested the interest computation and the penalty assessments. The Department conducted a hearing, and this Letter of Findings results.

**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 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 asserts that the additional tax for 2002 was the result of including two affiliated corporations in Taxpayer's consolidated return. However, Taxpayer has not established reasonable cause for its failure to include the affiliated corporations; thus, Taxpayer has not established reasonable cause for penalty waiver.

**FINDING**

Taxpayer's protest is denied.

**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).

Other than its explanation provided in Issue I above, Taxpayer has not provided information to justify penalty reduction or waiver.

**FINDING**

Taxpayer's protest is denied.

**III. Tax Administration—Interest.**

**DISCUSSION**

Taxpayer protests the imposition of interest with respect to his assessment. In particular, Taxpayer protests that it should be permitted to net its refund for previous years against the assessment for the later years prior to the computation of interest. Instead, the Department computed interest for each separate year to the date of refund or assessment. Then, the Department netted the refunds against the assessments. The net difference between the proposed calculations is estimated to result in Taxpayer owing an additional \$50,000.

Under IC § 6-8.1-9-2(a):

If the department finds that a person has paid more tax for a taxable year than is legally due, the department shall apply the amount of the excess against any amount of that same tax that is assessed and is currently due. The department may then apply any remaining excess against any of the listed taxes that have been assessed against the person and that are currently due. Subject to subsection (c), if any excess remains after the department has applied the overpayment against the person's tax liabilities, the department shall either refund the amount to the person or, at the person's request, credit the amount to the person's future tax liabilities.

This section—which provides for the Department requirement or discretion to use refunds to offset liabilities—provides for an offset against liabilities currently due. Once the Department determines that a taxpayer has overpaid for a period, the Department can look at liabilities that exist as of the refund determination and apply the refund on those liabilities determined as of the refund date. This does not allow the Department to go back in time and apply an overpayment to a subsequent liability on the original due date for that liability. Thus, Taxpayer's interest reallocation argument is denied.

**FINDING**

Taxpayer's protest is denied.

**CONCLUSION**

Taxpayer's protest is denied on all issues.

*Posted: 03/24/2010 by Legislative Services Agency*

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