

**Letter of Findings Number: 09-0694P
Income Tax
For Tax Year Ended February 2, 2008**

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ISSUE

I. Tax Administration—Underpayment Penalty.

Authority: IC § 6-3-4-4.1; IC § 6-8.1-6-1; IC § 6-8.1-10-2.1.

Taxpayer protests the imposition of a ten percent late payment penalty.

STATEMENT OF FACTS

Taxpayer is a corporation doing business in Indiana. Taxpayer protests the imposition of the underpayment penalty and interest on an underpayment of its income tax for the tax year ended on February 2, 2008. Taxpayer underpaid on an estimated payment of its Indiana corporate income tax for that tax year. The Indiana Department of Revenue ("Department") issued a proposed assessment for underpaid adjusted gross income tax, underpayment penalty, and interest. Taxpayer protests the imposition of penalty and interest but did not request a hearing. The Letter of Findings was written based on the materials in the file. Further facts will be supplied as required.

I. Tax Administration—Underpayment Penalty.

DISCUSSION

Taxpayer protests the imposition of a penalty on an underpayment it made on its Indiana corporate income tax for the tax year ended February 2, 2008. Taxpayer states that it had filed for an extension of its federal filing, which Indiana recognizes. Also, Taxpayer states that the reason for its underpayment was a miscalculation of its apportionment factor due to staff turnover. Finally, Taxpayer points out that it paid significantly more in estimated payments of Indiana adjusted gross income tax than it paid in total for the prior year. Taxpayer believes that these circumstances are sufficient to warrant waiver of penalty. Taxpayer also protests the imposition of interest. Under IC § 6-8.1-10-1(e), the Department may not waive interest.

The relevant statute regarding federal filing extensions is IC § 6-8.1-6-1, which states:

- (a) If a person responsible for filing a tax return is unable to file the return by the appropriate due date, he may petition the department, before that due date, for a filing extension. The person must include with the petition a payment of at least ninety percent (90[percent]) of the tax that is reasonably expected to be due on the due date. When the department receives the petition and the payment, the department shall grant the person a sixty (60) day extension.
- (b) If a person responsible for filing a tax return has received an extension of the due date and is still unable to file the return by the extended due date, he may petition the department for another extension. The person must include in the petition a statement of the reasons for his inability to file the return by the due date. If the department finds that the person's petition is proper and that the person has good cause for requesting the extension, the department may extend the person's due date for any period that the department deems reasonable under the circumstances. The department may allow additional, successive extensions if the person properly petitions for the extension before the end of his current extension period.
- (c) If the Internal Revenue Service allows a person an extension on his federal income tax return, the corresponding due dates for the person's Indiana income tax returns are automatically extended for the same period as the federal extension, plus thirty (30) days. However, the person must pay at least ninety percent (90[percent]) of the Indiana income tax that is reasonably expected to be due on the original due date by that due date, or he may be subject to the penalties imposed for failure to pay the tax.
- (d) Any tax that remains unpaid during an extension period accrues interest at a rate established under [IC 6-8.1-10-1](#) from the original due date, but that tax will not accrue any late payment penalties until the extension period has ended.

(Emphasis added).

Next, IC § 6-3-4-4.1(b) states:

Every individual who has adjusted gross income subject to the tax imposed by this article and from which tax is not withheld under the requirements of section 8 of this chapter shall make a declaration of estimated tax for the taxable year. However, no such declaration shall be required if the estimated tax can reasonably be expected to be less than one thousand dollars (\$1,000). In the case of an underpayment of the estimated tax as provided in Section 6654 of the Internal Revenue Code, there shall be added to the tax a penalty in an amount prescribed by [IC 6-8.1-10-2.1\(b\)](#).

(Emphasis added).

Next, the Department refers to IC § 6-8.1-10-2.1(b), which states:

Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10[percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

In this case, Taxpayer states that it had staff turnover and that it remitted more than it had the previous year. Taxpayer believes that this warrants waiver of the late payment penalty.

The Department notes that Taxpayer has not established that it paid at least ninety percent of the Indiana income tax that was reasonably expected to be due by the extended due date. It is Taxpayer's duty to ensure that it remits at least ninety percent of the estimated tax, as required by IC § 6-8.1-6-1(c). Taxpayer did not do so. The underpayment penalty is appropriate. As explained above, the Department may not waive interest.

FINDING

Taxpayer's protest is denied.

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