

**Letter of Findings Number: 10-0063P**  
**Underpayment of Estimated Taxes Penalty**  
**For the Year 2008**

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**ISSUE**

**I. Tax Administration - Underpayment of Estimated Taxes Penalty.**

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

Taxpayer protests the imposition of penalty for the underpayment of estimated taxes.

**STATEMENT OF FACTS**

The Indiana Department of Revenue ("Department") assessed Taxpayer penalty for underpayment of estimated adjusted gross income tax for the year 2008. Taxpayer protested the assessment of penalty. The Department sent correspondence dated January 14, 2010, to Taxpayer offering Taxpayer the option to have a hearing on its protest; otherwise the Department would make its determination on documentation in Taxpayer's protest file. Taxpayer did not reply to the Department's letter. Due to Taxpayer's lack of response, this Letter of Findings is written based on the information in Taxpayer's protest file and other Department records relating to Taxpayer.

**I. Tax Administration - Underpayment of Estimated Taxes Penalty.**

**DISCUSSION**

The Department notes that all tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(b), (c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

IC § 6-3-4-4.1 states in part:

(a) Any individual required by the Internal Revenue Code to file estimated tax returns and to make payments on account of such estimated tax shall file estimated tax returns and make payments of the tax imposed by this article to the department at the time or times and in the installments as provided by Section 6654 of the Internal Revenue Code. However, the following apply to estimated tax returns filed and payments made under this subsection:

(1) In applying Section 6654 of the Internal Revenue Code for the purposes of this article, "estimated tax" means the amount which the individual estimates as the amount of the adjusted gross income tax imposed by this article for the taxable year, minus the amount which the individual estimates as the sum of any credits against the tax provided by [IC 6-3-3](#).

(2) Estimated tax for a nonresident alien (as defined in Section 7701 of the Internal Revenue Code) must be computed by applying not more than one (1) exclusion under [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#), regardless of the total number of exclusions that [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#) permit the taxpayer to apply on the taxpayer's final return for the taxable year.

(b) 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\(b\)](#).

(c) Every corporation subject to the adjusted gross income tax liability imposed by this article shall be required to report and pay an estimated tax equal to the lesser of:

(1) twenty-five percent (25 percent) of such corporation's estimated adjusted gross income tax liability for the taxable year; or

(2) the annualized income installment calculated in the manner provided by Section 6655(e) of the Internal Revenue Code as applied to the corporation's liability for adjusted gross income tax.

A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated adjusted gross income tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing estimated adjusted gross income tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year. The department shall prescribe the manner and forms for such reporting and payment.

(d) The penalty prescribed by [IC 6-8.1-10-2.1\(b\)](#) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any

estimated payments of adjusted gross income tax which equal or exceed:

- (1) the annualized income installment calculated under subsection (c); or
- (2) twenty-five percent (25 percent) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25 percent) of the corporation's final adjusted gross income tax liability for such taxable year.

(e) The provisions of subsection (c) requiring the reporting and estimated payment of adjusted gross income tax shall be applicable only to corporations having an adjusted gross income tax liability which, after application of the credit allowed by [IC 6-3-3-2](#) (repealed), shall exceed two thousand five hundred dollars (\$2,500) for its taxable year.

(f) If the department determines that a corporation's:

- (1) estimated quarterly adjusted gross income tax liability for the current year; or
- (2) average estimated quarterly adjusted gross income tax liability for the preceding year;

exceeds five thousand dollars (\$5,000), after the credit allowed by [IC 6-3-3-2](#) (repealed), the corporation shall pay the estimated adjusted gross income taxes due by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)) or by delivering in person or overnight by courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

(g) If a corporation's adjusted gross income tax payment is made by electronic funds transfer, the corporation is not required to file an estimated adjusted gross income tax return.

(Emphasis added).

Taxpayer argues that when it made its first three quarterly estimated adjusted gross income tax payments for 2008, it was basing its estimates on its 2007 IT-20 as originally filed and as such Taxpayer was fully compliant with the statutory requirements. Taxpayer subsequently filed an amended 2007 IT-20 on October 27, 2008, based on adjustments to its 2007 federal return pursuant to an IRS audit which concluded on September 17, 2008. Taxpayer then adjusted its last quarter estimated tax payment to compensate for the difference. Overall, Taxpayer did not underpay taxes due for 2008.

Penalty waiver under IC § 6-8.1-10-2.1 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. 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 provided sufficient information to show that its estimated payments for 2007 were sufficient to meet the payment threshold as set forth in IC § 6-3-4-4.1.

#### **FINDING**

Taxpayer's protest is sustained.

*Posted: 07/28/2010 by Legislative Services Agency*

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