

**Letter of Findings Number: 10-0243P
Individual Income Tax-Penalty
For the Year 2008**

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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.

STATEMENT OF FACTS

Taxpayers are individuals residing outside Indiana and will be referred to as "Taxpayer." Taxpayer owned interests in multiple S corporations doing business in Indiana. In 2008, one of the S corporations incurred a substantial capital gain. Taxpayer was not aware of the amount of the capital gain until after the April 15, 2009, due date for Taxpayer's 2008 individual income tax return.

Taxpayer filed the 2008 individual income tax return prior to the November 15, 2009, extended due date and paid the resulting tax less amounts previously withheld by the S corporations; however, Taxpayer was also assessed a ten percent negligence penalty. Taxpayer protested the penalty, the Indiana Department of Revenue conducted an administrative 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 individual 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 has provided sufficient information to conclude that the S corporation only provided the information to Taxpayer after the April 15, 2009, deadline for filing and remitting Indiana individual income taxes. Taxpayer did not control the S corporation in question, which indicates that Taxpayer could not control the timing of the information that determined the 2008 capital gains which result in the additional income. Finally, Taxpayer has an excellent compliance record with Indiana, which demonstrates reasonable cause because of a consistent history of tax compliance. Based on these factors, Taxpayer demonstrated reasonable cause with regard to Taxpayer's 2008 Indiana individual income tax payment and filing duties; therefore, the protest is sustained.

FINDING

Taxpayer's protest is sustained.

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