

**Letter of Findings: 10-0370P
Corporate Income Tax
For the Year 2008**

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ISSUE

I. Tax Administration – Penalty.

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

Taxpayer requests an abatement of a \$250 penalty assessment.

STATEMENT OF FACTS

Taxpayer is an S Corporation doing business in Indiana. In 2008, the Department of Revenue (the "Department") assessed Taxpayer a \$250 penalty because Taxpayer failed to timely file its 2008 Form IT-20S. Taxpayer requested that the Department abate the penalty.

Upon receiving Taxpayer's request, the Department sent Taxpayer a letter that informed Taxpayer to provide additional evidence or request a hearing within twenty days. The Department also followed up with a phone call. Taxpayer did not return the call, nor did Taxpayer provide additional evidence or request a hearing. This Letter of Findings, therefore, is written based on the information available within Taxpayer's protest file.

I. Tax Administration – Penalty.

DISCUSSION

The Department assessed Taxpayer penalty because Taxpayer failed to timely file its 2008 Form IT-20S by the due date, April 15, 2009. Taxpayer claimed that, under its accountant's instruction, the due date was October 15, 2009. To support its statement, Taxpayer submitted a copy of a letter, dated March 14, 2009, from its accountant, in relevant part, stating that "[t]he return should be signed and dated by a corporate officer and mailed on or before October 15, 2009."

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).

[45 IAC 15-11-2](#)(b) further states:

"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.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, as follows:

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.

In this instance, Taxpayer maintained that its accountant instructed Taxpayer to file its 2008 return by October 15, 2009. However, Taxpayer's accountant is the agent employed by Taxpayer to ensure its compliance of the Indiana statutes. Taxpayer, therefore, is responsible for its agent's compliance failure. In the absence of

other sufficient documentation, the Department is not able to agree that Taxpayer has demonstrated a reasonable cause for a waiver. Thus, Taxpayer's request is respectfully denied.

FINDING

Taxpayer's protest on the imposition of penalty is respectfully denied.

Posted: 09/01/2010 by Legislative Services Agency

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