

Letter of Findings: 10-0380P
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 was a partnership, which consisted of two individuals, 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-65. 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. Subsequently, Taxpayer provided additional information to support its request. This Letter of Findings, therefore, is written based on the documentation that Taxpayer submitted and 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-65. Taxpayer, however, believes that it had reasonable cause for a waiver.

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 has maintained a good compliance history. Additionally, Taxpayer has provided sufficient documentation establishing that its failure to timely file its 2008 Form IT-65 was due to reasonable cause and not due to negligence.

FINDING

Taxpayer's protest on the imposition of penalty is sustained.

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