

**Letter of Findings: 10-0287
Individual Income Tax
For the Years 1996-2005**

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ISSUES

I. Individual Income Tax – Imposition.

Authority: IC § 6-8.1-5-1; [45 IAC 3.1-1-2](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayers protest the imposition of income tax after a determination that taxpayers had neither filed returns nor remitted amounts due.

II. Tax Administration – Imposition of Negligence Penalty.

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

Taxpayers protest the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayers, a husband and wife, jointly filed federal income tax returns. The husband is the sole shareholder of an S-corporation. The Indiana Department of Revenue ("Department") conducted an income tax investigation of taxpayers, who had not filed income tax returns with the Department for the 1996 through 2005 tax years ("Tax Years"). The Department relied upon the taxpayers' reported federal adjusted gross income per the Internal Revenue Service ("IRS") for all of the Tax Years.

The Department assessed income tax for each of the Tax Years. Those assessments also included interest and penalty. Taxpayers protested the proposed assessments, claiming that they had filed Indiana income tax returns, and paid amounts due. An administrative hearing was held, and this Letter of Findings results.

I. Individual Income Tax – Imposition.

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).

[45 IAC 3.1-1-2](#) defines gross income for individuals, and states that "Indiana residents must report all income as defined by § 61 of the Internal Revenue Code."

Taxpayers claimed that they had hand delivered their income tax returns and payments to the Department's local office near taxpayers' residence. During both the investigation and the hearing process, taxpayers claimed that they could produce copies of the Indiana income tax returns they filed, as well as evidence of payments made. But after a failed search for those documents and evidence, taxpayers said that they may have lost those documents and that evidence during a change in residence, or as a result of flooding to their residence a couple of years after their move.

Taxpayers did not present any documentation that supported their alleged filings and payments. The Department's review of taxpayers' filing history subsequent to the hearing did not reveal any evidence contrary to the results documented by the investigation report. That history further shows that taxpayer filed returns for the 2007 and 2008 tax years once the Department's investigation started. Taxpayers have not overcome the Department's determination that taxpayer did not file Indiana income tax returns for the Tax Years, or pay Indiana income tax due for the Tax Years.

In the absence of any documentation to the contrary, Taxpayers were Indiana residents during the Tax Years, and therefore were obligated to report Indiana gross income and remit any amounts due.

FINDING

Taxpayers' protest is respectfully denied.

II. Tax Administration – Imposition of Negligence Penalty.

DISCUSSION

Taxpayers also protested the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation [45 IAC 15-11-2\(b\)](#) clarifies the standard for the imposition of the negligence penalty as follows:

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 standard for waiving the negligence penalty is given at [45 IAC 15-11-2\(c\)](#) 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.

Taxpayers have not affirmatively established that their failure to file Indiana income tax returns and pay tax on their income earned during the Tax Years was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayers' protest is respectfully denied.

CONCLUSION

Taxpayers' protest of the assessment of income tax and the imposition of negligence penalty are both denied.

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