

**Letter of Findings Number: 10-0290P  
Individual Income Tax-Penalty  
For the Years 2006 - 2008**

**NOTICE:** Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Tax Administration–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 are a non-resident married couple. Taxpayers own an S corporation doing business in Indiana. In 2009, Taxpayers hired a new accountant, who discovered that Taxpayers had not filed Indiana individual income tax returns for 2006 through 2008. The new accountant filed returns with the Indiana Department of Revenue ("Department") for the years at issue, and paid the appropriate amount of tax and interest due. However, the Department issued proposed assessments for a ten percent negligence penalty for the years at issue. Taxpayers protest the imposition of negligence penalty. Taxpayers did not request a hearing. The Letter of Findings was written based on the materials in the file.

**I. Tax Administration–Negligence Penalty.**

**DISCUSSION**

Taxpayers protest the imposition of the ten percent negligence penalty on Taxpayers' 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.

Taxpayers state that the assessments resulted from "lack of experience" and notes that the amounts owed to the Department were promptly paid once the error was discovered. However, the circumstances presented by Taxpayers do not demonstrate that it exercised "reasonable cause." Thus, penalty waiver is not warranted.

**FINDING**

Taxpayers' protest is respectfully denied.

*Posted: 09/29/2010 by Legislative Services Agency*  
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