

Letter of Findings Numbers: 10-0434P; 10-0435P; 10-0436P
Gross Income Tax, Sales Tax, and Utility Receipts Tax-Penalty
For the Periods 2000-2009

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ISSUES

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.

II. Tax Administration–Estimated Tax Penalty.

Authority: IC § 6-2.3-6-1.

Taxpayer protests the imposition of penalties for failure to pay sufficient estimated taxes.

III. Tax Administration–Interest.

Authority: IC § 6-8.1-10-1.

Taxpayer protests the imposition of interest on its tax liability.

STATEMENT OF FACTS

Taxpayer is a municipality located in Indiana. Taxpayer operates a water utility for the municipality's residents.

The Indiana Department of Revenue ("Department") audited Taxpayer. As a result of the audit, the Department determined that Taxpayer did not file gross income tax returns for 2000 through 2002 and utility receipts tax returns for 2003 through 2006 and 2008. The Department assessed tax, interest, and a negligence penalty for each unfiled year. The Department also issued an assessment for utility receipts tax for 2007, a year in which Taxpayer filed a utility receipts tax return. In addition, the Department imposed a penalty for failure to pay sufficient estimated utility receipts taxes for 2004 through 2006 and 2008.

Finally, the Department determined that Taxpayer underreported its 2009 sales tax. As a result, the Department imposed sales tax, interest, and a ten-percent negligence penalty.

Taxpayer protested the interest and penalty assessments. The Department sent Taxpayer three letters indicating that Taxpayer had twenty (20) days to submit additional information in support of its protest or to request a hearing. Taxpayer did not submit additional information or request a hearing. As a result, these Letters of Findings are written based on Taxpayer's previously-submitted information and Department records relating to Taxpayer.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten-percent negligence penalty on Taxpayer's failure to remit gross income tax, utility receipts tax, and sales tax in a timely manner.

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.

With regard to its gross income tax liabilities for 2000 through 2002 and utility receipts tax liabilities for 2003 through 2008, excluding 2007, Taxpayer's penalty liabilities are the direct result of a failure to file tax returns despite earning over five million dollars in taxable receipts. While Taxpayer has pleaded that it is struggling financially, a failure to file returns for eight years out of a nine-year period while earning millions of dollars subject to tax does not constitute "ordinary business care and prudence."

However, with regard to its utility receipts tax assessment for 2007 and its sales tax assessment for 2009, Taxpayer has provided sufficient information to conclude that it acted with "ordinary business care" with regard to these specific taxes.

FINDING

Taxpayer's protest is sustained for utility receipts tax for 2007 and for sales tax for 2009. Taxpayer's protest is denied for all other periods and tax types.

II. Tax Administration—Estimated Tax Penalty.

DISCUSSION

Taxpayer protests the imposition of a ten-percent penalty for failure to make sufficient estimated utility receipts tax payments. [IC 6-2.3-6-1\(f\)](#) provides:

(f) The penalty prescribed by [IC 6-8.1-10-2.1\(b\)](#) shall be assessed by the department on taxpayers failing to make payments as required in subsection (b) or (d). However, a penalty may not be assessed as to any estimated payments of utility receipts tax that equal or exceed:

(1) twenty percent (20 [percent]) of the final tax liability for the taxable year; or

(2) twenty-five percent (25 [percent]) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall be assessed only on the difference between the actual amount paid by the taxpayer on the estimated return and twenty-five percent (25 [percent]) of the taxpayers's [sic.] final utility receipts tax liability for the taxable year.

For 2004, 2005, 2006, and 2008, Taxpayer did not report or remit any utility receipts taxes until after the Department's audit. Taxpayer has not provided legal or factual grounds to justify its failure to file and/or remit taxes or to make required quarterly payments.

FINDING

Taxpayer's protest is denied.

III. Tax Administration—Interest.

DISCUSSION

Taxpayer protests the imposition of interest with respect to its late payment of tax. For taxes unpaid by the due date for payment, [IC § 6-8.1-10-1\(b\)](#) provides for the imposition of interest. [IC § 6-8.1-10-1\(e\)](#), provides that the Department cannot waive interest.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protest is sustained with regard to negligence penalties imposed for utility receipts tax for 2007 and for sales tax for 2009. Taxpayer's protest is otherwise denied in full.

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