

**Letter of Findings Number: 10-0581P
Corporate Income Tax-Penalty
For the Year 2008**

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ISSUES

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-6-1; 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 § 6-3-4-4.1.

Taxpayer protests the imposition of the ten percent penalty for failure to make sufficient estimated tax payments during the tax year.

STATEMENT OF FACTS

Taxpayer is a C corporation operating in Indiana. For tax year 2007, Taxpayer reported a corporate income tax liability of roughly \$614,000. For tax year 2008, Taxpayer had an overpayment carryover of \$304,000 from 2007 and remitted \$75,000 for the second and third quarters of 2008. Prior to the deadline, Taxpayer made no other payments. Taxpayer paid \$610,000 in September 2008.

Taxpayer reported a 2008 Indiana tax liability of \$1,064,000. Because of Taxpayer's underpayments of both quarterly payments and its final liability, the Indiana Department of Revenue ("Department") assessed a late payment penalty and a penalty for failure to make sufficient quarterly estimated tax payments. Taxpayer protested the penalty assessments.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty imposed because of Taxpayer's failure to remit the full amount of corporate 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.

IC § 6-8.1-6-1(c) provides that:

If the Internal Revenue Service allows a person an extension on his federal income tax return, the corresponding due dates for the person's Indiana income tax returns are automatically extended for the same period as the federal extension, plus thirty (30) days. However, the person must pay at least ninety percent (90%) of the Indiana income tax that is reasonably expected to be due on the original due date by that due

date, or he may be subject to the penalties imposed for failure to pay the tax.

In Taxpayer's case, Taxpayer paid roughly seventy four percent of its previous year's liability and less than forty three percent of its ultimate 2008 liability. The amount paid in taxes prior to April 15, 2009, was less than any of Taxpayer's three prior reported liabilities. Based on its insufficient tax payments despite knowledge of its prior tax liabilities, the Department cannot agree that Taxpayer acted with "reasonable cause" with regard to its 2008 Indiana tax liabilities.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Estimated Tax Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent penalty imposed because of Taxpayer's failure to make sufficient estimated tax payments as required pursuant to IC § 6-3-4-4.1(d).

IC § 6-3-4-4.1 provides in relevant part:

(c) Every corporation subject to the adjusted gross income tax liability imposed by this article shall be required to report and pay an estimated tax equal to the lesser of:

(1) twenty-five percent (25%) of such corporation's estimated adjusted gross income tax liability for the taxable year; or

(2) the annualized income installment calculated in the manner provided by Section 6655(e) of the Internal Revenue Code as applied to the corporation's liability for adjusted gross income tax.

A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated adjusted gross income tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing estimated adjusted gross income tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year. The department shall prescribe the manner and forms for such reporting and payment.

(d) The penalty prescribed by [IC 6-8.1-10-2.1](#)(b) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:

(1) the annualized income installment calculated under subsection (c); or

(2) twenty-five percent (25%) 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 only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25%) of the corporation's final adjusted gross income tax liability for such taxable year.

IC § 6-3-4-4.1 merely requires payments based on the prior year's liability. A corporation's duty necessary to avoid penalty is straightforward: pay one-fourth of the prior year's liability. Taxpayer—despite the prior year's liability—did not meet the minimum statutory payment requirement. Based on the facts and circumstances, Taxpayer has not provided sufficient legal or factual grounds to justify penalty waiver.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protest is denied in full.

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