

**Letter of Findings Number: 10-0622P
Individual Income Tax-Penalty
For the Year 2009**

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ISSUE

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.

STATEMENT OF FACTS

Taxpayers are individuals residing in Indiana and will be referred to hereinafter as "Taxpayer." Taxpayer converted a one hundred year-old house into a bed and breakfast. However, according to Taxpayer, financing considerations and cost issues related to the bed and breakfast resulted in extreme financial difficulties during 2009. To alleviate the financial difficulties, Taxpayer began selling rental houses to pay off various debts, which resulted in further financial difficulties prior to any tax payments.

Taxpayer filed its 2009 individual income tax return after the statutory deadline and paid the resulting tax. However, Taxpayer was also assessed a ten percent negligence penalty. Taxpayer protested the penalty and this Letter of Findings results.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's 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.

Taxpayer provided a narrative demonstrating its financial situation in 2008 and 2009. The narrative indicates that Taxpayer had extensive business-related debts which had to be paid pursuant to loan agreements with various banks. Upon payment of these debts, Taxpayer paid the base tax to the Department. The unusual cash flow situation demonstrates reasonable cause for nonpayment of tax because it demonstrates the reason for the inability to pay the tax in question.

Further, Taxpayer has a good—but not perfect—compliance record with the Department. This record further demonstrates reasonable cause because of a consistent history of tax compliance. Based on the prior history of tax compliance and the unique situation that led to the late tax payment, Taxpayer demonstrated reasonable cause with regard to the 2009 Indiana individual income tax payment and filing duties; therefore, the protest is

sustained.

FINDING

Taxpayer's protest is sustained.

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