

**Letter of Findings Number: 02-20100687P**  
**Corporate Income Tax-Penalty**  
**For the Tax Year Ending December 31, 2009**

**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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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 § 6-3-2-20; 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**

Taxpayer is a C corporation operating in Indiana. Taxpayer reported its federal taxable income on Form IT-20 and requested a refund of roughly \$3,300. On Taxpayer's return, Taxpayer reported three modifications to federal taxable income. However, Taxpayer only incorporated two of the modifications in determining its Indiana adjusted gross income.

The Indiana Department of Revenue ("Department") added the third modification—for royalties paid by Taxpayer—to Taxpayer's federal taxable income. The effect of the addback was to generate an assessment, including interest and penalties. Taxpayer filed an amendment to the IT-20 on which it sought to effectively deduct the royalties as nonbusiness income. Taxpayer protested the tax, interest, and penalties.

The Department sent a letter to Taxpayer indicating that it had twenty (20) days to request an administrative hearing. Taxpayer did not request a hearing during that time period. As a result, this Letter of Findings is written based on the Department's records related to Taxpayer and its November 22, 2010, letter to the Department.

**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.

Notwithstanding its November 22, 2010, letter, Taxpayer has not provided sufficient information to conclude that the Department's addback of royalties—as required under IC § 6-3-2-20—was improper, and has not otherwise demonstrated legal or factual grounds to demonstrate that penalty waiver is appropriate to its facts and circumstances.

**FINDING**

Taxpayer's protest is denied.

*Posted: 03/23/2011 by Legislative Services Agency*  
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