

**Letter of Findings Number: 01-20100719P
Individual Income Tax-Penalty
For the Years 2006 to 2008**

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ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-3-5-1; 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 married couple residing in Michigan. Taxpayers reported their income for 2004 through 2008 to Michigan. Taxpayers did not report the income to Indiana because of Indiana's reciprocal tax agreement with Michigan pursuant to IC § 6-3-5-1. However, because the income was derived from sources not covered by the reciprocal tax agreement, Taxpayers determined that they properly owed Indiana individual income tax. Taxpayers remitted the tax.

The Indiana Department of Revenue ("Department") then assessed interest, a ten-percent negligence penalty, and a penalty for failure to make sufficient estimated payments pursuant to IC § 6-3-4-4.1. Taxpayers requested a refund of an amount equal to the negligence penalties for 2006 through 2008. Additional facts will be supplied as necessary.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayers protest the imposition of the ten-percent negligence penalty imposed because of Taxpayers' failure to remit the full amount of 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 explained that they had remitted the full amount of tax to Michigan rather than Indiana because they assumed that the states had reciprocity on all income rather than on merely compensation for services. In Taxpayers' case, their late filing of 2006 through 2008 returns is a one-time occurrence based on a reasonable, though ultimately erroneous, interpretation of Indiana's tax laws. Thus, Taxpayers have provided sufficient information to conclude that they had reasonable cause for late filing of their 2006 through 2008 Indiana income tax returns.

FINDING

Taxpayers' protest is sustained.

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