DEPARTMENT OF STATE REVENUE

02-20100581P.SLOF

Supplemental Letter of Findings Number: 02-20100581P
Corporate Income Tax-Penalty
For the Year 2008

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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.

ISSUES

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; IC § 6-8.1-8-1.5; IC § 6-8.1-6-1; 45 IAC 15-11-2; Letter of Findings 02-20100581P (November 22, 2010).

Taxpayer protests the imposition of the ten percent negligence penalty.

II. Tax Administration–Estimated Tax Penalty.

Authority: IC § 6-3-4-4.1; Letter of Findings 02-20100581P (November 22, 2010).

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

III. Tax Administration–Fees.

Authority: IC § 6-8.1-5-1.

Taxpayer protests the imposition of fees relating to various collection costs.

STATEMENT OF FACTS

On October 20, 2010, the Department mailed Taxpayer a letter explaining to Taxpayer to contact the Department if Taxpayer wanted a hearing. Taxpayer did not contact the Department to request a hearing, as a result the Department issued a Letter of Finding (Letter of Findings 02-20100581P (November 22, 2010)) denying Taxpayer's protest. In that Letter of Findings ("LOF"), the Department stated the following 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. [sic]
>
> 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.
>
> After the issuance of the LOF, a rehearing was held and this Supplemental Letter of Findings results.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of negligence penalties. At the outset, the Department notes that under IC § 6-8.1-10-1(e) interest cannot be waived. The Department also notes that per IC § 6-8.1-10-2.1, 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. Further, the Indiana Administrative Code, 45 IAC 15-11-2, states:

> (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.

(Emphasis added).

The Department also notes that IC § 6-8.1-8-1.5 states that:

Whenever a taxpayer makes a partial payment on the taxpayer's tax liability, the department shall apply the partial payment in the following order:

(1) To any penalty owed by the taxpayer.

(2) To any interest owed by the taxpayer.

(3) To the tax liability of the taxpayer.

Turning to Taxpayer's general arguments for both penalties, Taxpayer states that "it did not have actual notice or knowledge of the grounds on which the penalties were apparently being asserted." Taxpayer also argues that it "was not allowed due process before being deprived of the estimated tax penalty" and asserts that the Department "harvest[ed]" the penalty payment. Regarding the latter assertion, IC § 6-8.1-8-1.5 governs the order of payment application. With regards to the notice and due process argument, 45 IAC 15-11-2(b) states in relevant part: "Ignorance of the listed tax laws, rules and/or regulations is treated as negligence." Thus Taxpayer is supposed to be aware of the applicable Indiana tax laws (in the Taxpayer's case IC § 6-8.1-6-1(c) and IC § 6-3-4-4.1 are the pertinent laws).

Taxpayer received a December 22, 2009, Proposed Assessment that had a line that stated "Penalty." The penalty from that Proposed Assessment was in the amount of ten percent. The Proposed Assessment states in part:

Original Tax (Corporate Income)	$1,064,172.48
Credits	$454,029.85
Penalty	$61,014.26

The difference between the original tax and the credits is $610,142.63 (Note: ten percent of that amount is $61,014.26). The issue of the misapplication of the September 22, 2009, payment is addressed further below, but it is worth stating that the fact that the payment was initially misapplied to 2009 does not overcome the fact that Taxpayer underpaid for 2008–that is, even with that $610,142 payment corrected to the tax year 2008, the payments made by Taxpayer on or before April 15, 2009 totaled $454,029.85. That amount was less than the ninety percent minimum required under IC § 6-8.1-6-1(c). The extension that Taxpayer received merely extended the due date for the return, Taxpayer still had a duty to pay at least ninety percent at the time of the original due date of April 15, 2009. Taxpayer did not pay at least ninety percent, hence Taxpayer was penalized. Also, Taxpayer's letter dated March 31, 2010, indicates that Taxpayer was aware of the penalty issue, since Taxpayer refers to the federal extension and Taxpayer cites to 45 IAC 15-11-2(c).

Regarding the other penalty issue (Section II below), the March 31, 2010, letter also states: "This notice is charging penalties of $106,723.51...." (Emphasis added). Although dealt with further in Section II, this letter from the Taxpayer shows that Taxpayer was aware that there were penalties. And if, for the sake of argument, Taxpayer was without "knowledge of the grounds on which the penalties were being asserted[,]" the Department's Letter of Findings 02-20100581P (November 22, 2010) explained to Taxpayer the basis of the two penalties. Finally, the Department notes that Taxpayer had a rehearing, at which Taxpayer argued its position with regards to the two penalties.

Taxpayer has provided the Department with a memorandum in support of its protest of the negligence penalties. Taxpayer also provided the Department with a "Penalty Chronology." In its memorandum, Taxpayer states that it filed an "Indiana Form IT-20 for 2008" on October 13, 2009. Taxpayer states that it "reflected an amount due of $610,142" and that Taxpayer "had paid this amount to the Department a month earlier, on September 22, 2009." Taxpayer states "[t]herefore, as of the date that the 2008 tax return was filed, the full amount had been paid." That, however, is not the test under IC § 6-8.1-6-1(c).

Taxpayer also states that "[o]n December 22, 2009, the Department issued a notice of proposed assessment to [Taxpayer] in the amount of $703,987.58 for 2008 []." Taxpayer states that the December Proposed Assessment "failed to give [Taxpayer] credit for the $610,142 payment remitted on September 22, 2009 and also included a penalty of $61,014.26 and interest of $32,830.69." Taxpayer further states it contacted the Department regarding the December 2009 Proposed Assessment; Taxpayer states it "was told that the error related to the posting of the 2008 tax return payment in September 2009 to the 2009 tax year estimated payments." In a letter to the Department, dated February 2, 2010, Taxpayer states in pertinent part, "Per the notice, the $610,142 payment made by [Taxpayer] is not being credited against the 2008 tax year. This payment was an electronic funds transfer payment...." Regarding the initial misapplication of Taxpayer's payment of $610,142, Taxpayer references to "Electronic Data Interchange (EDI) coding errors...." However, it does not appear that the Department caused the payment application error, and the payment was corrected to reflect that it was for 2008.

With regards to the penalty addressed in Section I of the prior LOF, the relevant statute is IC § 6-8.1-6-1(c). That statute 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[percent]) 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.
> (Emphasis added).

As noted, under 45 IAC 15-11-2(b) "Ignorance of the listed tax laws, rules and/or regulations is treated as negligence." Thus the question before the Department is the following: Did Taxpayer pay at least ninety percent of the Indiana income tax that was reasonably expected to be due on the original due date by that due date? The original LOF found that:

> 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.
> (Emphasis added).

Taxpayer in its memorandum states that it has "consistently overpaid its estimated taxes by a considerable amount [,]" but Taxpayer does not establish how that is relevant to the issue of the underpayment. What is at issue is that Taxpayer did not make a payment in compliance with IC § 6-8.1-6-1(c); as the original LOF noted, if the previous tax year is used as the reasonably expected baseline then Taxpayer only paid "roughly seventy four percent[.]" And as the LOF also notes, if tax year 2008 is used then Taxpayer paid "less than forty three percent of its ultimate 2008 liability." The original LOF further notes that "[t]he amount paid in taxes prior to April 15, 2009, was less than any of Taxpayer's three prior reported liabilities." At the rehearing Taxpayer argued that it did not anticipate owing more taxes in 2008, that the volatility of a particular commodity market affected Taxpayer (i.e., commodity price changes, commodity related costs rose). But even if the Department accepted Taxpayer's argument about the commodity market for 2008, Taxpayer still did not meet the ninety percent amount using 2007 as a baseline.

Thus the Department cannot agree with Taxpayer that this constituted ordinary business care. Taxpayer did not meet the ninety percent threshold provided by IC § 6-8.1-6-1(c) (which is a minimum threshold). Taxpayer's actions do not constitute reasonable cause, as provided by 45 IAC 15-11-2. Therefore, the penalty was properly imposed.

FINDING

Taxpayer's protest is respectfully denied.

II. Tax Administration–Estimated Tax Penalty.

DISCUSSION

Taxpayer also protests the imposition of the ten percent penalty imposed pursuant to IC § 6-3-4-4.1(d). As noted above, Taxpayer argues that it did not have notice of the penalty. The Department again notes that from Taxpayer's correspondence, it appears that Taxpayer was aware that penalties (plural) were at issue. In a letter dated March 31, 2010, Taxpayer states in relevant part:

> This letter is in response to a notice received for [Taxpayer] dated February 22, 2010, a copy of which is enclosed for your reference.
> This notice is charging penalties of $106,723.51 and interest....

The letter goes on to state, "We are respectfully requesting abatement for the penalties assigned to the 2008 tax year." Thus from the February 22, 2010, Proposed Assessment the Taxpayer was able to discern that there were penalties at issue. The first penalty was listed on the "Penalty" line on the Proposed Assessment ("Penalty $61,014.26"); the other penalty, although not listed with a "Penalty" line, can be gleaned from the Proposed Assessment. The Proposed Assessment shows a prior payment of $564,433.38. As Taxpayer was aware, in September of 2009 it made a payment of $610,142. The difference between those two amounts is $45,708.62. Further, the Department notes that it does not appear that Taxpayer completed Schedule IT-2220, the estimated tax portion of the IT-20 form. From Taxpayer's letter, the "penalties" amount cited in the letter is $106,723.51. That amount is roughly equal to the $61,014.26 penalty plus the $45,708.62 penalty. And as noted above, Taxpayer was further made aware of the Department's basis for the penalties via Letter of Findings 02-20100581P (November 22, 2010).

Turning to Taxpayer's argument, IC § 6-3-4-4.1 states 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[percent]) 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[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 only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25[percent]) of the corporation's final adjusted gross income tax liability for such taxable year. (Emphasis added).

As Department's prior LOF noted:

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.

The Department notes that Taxpayer's quarterly estimated payments were due on April 21, 2008; June 20, 2008; September 22, 2008; and December 22, 2008. Taxpayer did not meet the quarterly estimated payment amount due for the third quarter, and Taxpayer did not make a payment for the fourth quarter. Therefore, the penalty was properly imposed.

FINDING

Taxpayer's protest is respectfully denied.

III. Tax Administration–Fees.

DISCUSSION

Taxpayer next argues that it had filed a protest with the Department and that a "Demand Notice" dated June 14, 2010, "was issued improperly." As Taxpayer puts it:

[T]he taxpayer also received a tax due reminder letter from the Department on June 17, 2010 and a collection notice from a collection bureau on August 9, 2010. Because the Department did not honor the taxpayer's protests, it appears that a warrant was issued and the matter was turned over to a collection agency, triggering collection fees [].

The protest that Taxpayer is referring to is a letter, referenced earlier, dated March 31, 2010. The mailing address on the letter was not to the Department's Legal Division, but the letter does state that Taxpayer was requesting the abatement of penalties for 2008. The Department finds that this suffices as a protest by Taxpayer. Thus Taxpayer's protest was filed on March 31, 2010, prior to the June 14, 2010, Demand Notice. The requirements of IC § 6-8.1-5-1(j) for the issuance of a "Demand Payment" were not met. Therefore, Taxpayer is sustained regarding the fees (specifically, sheriff costs, agency damages, and local clerk costs) that arose after March 31, 2010.

FINDING

Taxpayer's protest of the sheriff costs, agency damages, and local clerk costs, that arose after March 31, 2010, is sustained.

SUMMARY

Taxpayer's protest of the two penalty issues is denied. Taxpayer's protest of the sheriff costs, agency damages, and local clerk costs, that arose after March 31, 2010, is sustained.

Posted: 07/27/2011 by Legislative Services Agency
An html version of this document.