

**Letter of Findings Number: 02-20110092P**  
**Corporate Income Tax-Penalty**  
**For the Tax Year 2009**

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**ISSUE**

**I. Tax Administration–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 penalty for failure to file corporate income tax returns.

**STATEMENT OF FACTS**

Taxpayer is a C Corporation. Taxpayer did not file its 2007 Indiana corporate income tax return in a timely manner. Taxpayer was assessed a penalty for late filing, which Taxpayer protested.

**I. Tax Administration–Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of a \$250 per year penalty for failure to file a tax return in a timely manner. The return showed no liability; however, the return was filed after the due date for the return.

IC § 6-8.1-10-2.1(g) provides:

A person who fails to file a return for a listed tax that shows no tax liability for a taxable year, other than an information return (as defined in section 6 of this chapter), on or before the due date of the return shall pay a penalty of ten dollars (\$10) for each day that the return is past due, up to a maximum of two hundred fifty dollars (\$250).

Penalty waiver is permitted if the taxpayer shows that the failure to file a tax return in a timely manner was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1(d). 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.

In addition, IC § 6-8.1-6-1(c) provides:

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.

Taxpayer received an extension for its filing of its federal corporate income tax return. The extension was for five months. Under IC § 6-8.1-6-1, the due date for the Indiana corporate income tax return was five months plus an additional thirty days. For Taxpayer, the 2009 Indiana corporate income tax return was due on October 15, 2010. Taxpayer filed its Indiana corporate income tax return on August 26, 2010, per Department records.

Taxpayer filed its return before the statutory deadline and therefore no penalty was due.

**FINDING**

Taxpayer's protest is sustained.

*Posted: 09/28/2011 by Legislative Services Agency*

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