

**Letter of Findings: 02-20110205P  
Corporate Income Tax  
For the Year 2004**

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**ISSUE**

**I. Tax Administration – Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer requests abatement of a penalty assessment for tax year 2004.

**STATEMENT OF FACTS**

Taxpayer is a partnership doing business in Indiana. In 2010, the Department of Revenue (the "Department") conducted an audit for tax years 2007, 2008, and 2009. During the audit, the Department also discovered that Taxpayer failed to file its IT-65 information return for tax year 2004. As a result, the Department assessed Taxpayer a \$250 penalty. Taxpayer requested that the Department abate the penalty.

Upon receiving Taxpayer's request, the Department sent Taxpayer a letter that informed Taxpayer it could provide additional evidence and/or request a hearing within twenty days. Taxpayer did not provide additional evidence or request a hearing. Thus, this Letter of Findings is written based on the information available within Taxpayer's protest file. Additional information will be provided as necessary.

**I. Tax Administration – Penalty.**

**DISCUSSION**

The Department assessed Taxpayer penalty because Taxpayer failed to timely file its 2004 Form IT-65 by the due date.

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).

[45 IAC 15-11-2](#)(b) further states:

"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.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, as follows:

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 this instance, Taxpayer stated, in writing, that:

During 2010 our organization was involved in a compliance audit for the years 2007–2009 by the Indiana Department of Revenue. During the process the auditor [] informed us that Indiana could not locate a copy of our 2004 Indiana Partnership Return. A signed copy was requested. As we did not have a copy of the signed return dated before the due date in 2005, another was signed and dated in 2010. To the best of our

knowledge, this was the first time that a copy of 2004 Indiana Partnership return was requested.

However, Taxpayer does not have a good tax compliance history. Taxpayer has on multiple occasions filed its returns late and/or failed to remit the taxes due. Taxpayer requests that the Department abate the \$250 penalty but does not provide any documentation to support its request. In the absence of sufficient documentation, the Department is not able to agree that Taxpayer has demonstrated a reasonable cause for waiver of the penalty. Thus, Taxpayer's request is respectfully denied.

**FINDING**

Taxpayer's protest of the imposition of penalty is respectfully denied.

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

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