

**Letter of Findings: 02-20110209P
Corporate Income Tax
For the Years 2008 and 2009**

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ISSUE

I. Tax Administration – Penalty.

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

Taxpayer requests abatements of two penalty assessments for tax years 2008 and 2009.

STATEMENT OF FACTS

Taxpayer is an S Corporation doing business in Indiana. In 2010, the Department of Revenue (the "Department") assessed Taxpayer a \$250 penalty because Taxpayer failed to timely file its 2008 Form IT-20S. Subsequently, in 2011, the Department assessed Taxpayer another penalty because Taxpayer failed to timely file its 2009 Form IT-20S. Not until the 2009 penalty assessment went to the collection stage, did Taxpayer request 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. The Department also followed up with a phone call in which Taxpayer explained the basis for penalty abatement. Thus, this Letter of Findings is written based on the phone hearing with Taxpayer and 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 2008 Form IT-20S by the due date, April 15, 2009, and its 2009 Form IT-20S by the due date, April 15, 2010. Taxpayer claimed that "[a] fire at our office site kept us operating on a temporary basis and caused many problems because some of our records were destroyed." As a result, Taxpayer asserted that it was not able to provide any documentation for its accountant to timely file the 2008 and 2009 returns.

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, the Department requested Taxpayer to provide documentation concerning the fire insurance claim to substantiate its assertion. Taxpayer explained that the fire occurred in late 2007 and Taxpayer, as a tenant, did not purchase any insurance coverage. Since the fire occurred in late 2007, Taxpayer's 2008 and 2009 records were not, as Taxpayer claimed, destroyed in the fire. In the absence of other sufficient documentation, the Department is not able to agree that Taxpayer has demonstrated a reasonable cause for a waiver. Thus, Taxpayer's request is respectfully denied.

FINDING

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

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