

Letter of Findings Number: 02-20110212P
Corporate Income Tax – Late Filing Penalty
For the Periods 2008 and 2009

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ISSUE

I. Tax Administration – Late Filing Penalty.

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

Taxpayer protests the imposition of the late filing penalty.

STATEMENT OF FACTS

Taxpayer was assessed a penalty for late payment of income tax. Taxpayer protested the penalty.

This Letter of Findings is written based on the information in Taxpayer's protest file and other Department records relating to Taxpayer in lieu of a hearing, per Taxpayer's request.

I. Tax Administration – Late Filing Penalty.

DISCUSSION

Taxpayer protests the imposition of a penalty for late payment of income tax.

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.

Taxpayer explains that it is a homeowner's association that is completely run by volunteers and which experienced a nearly complete turnover in board members over the course of 2010. When the new board realized that Taxpayer had not filed returns, its treasurer promptly filed the returns for 2008 and 2009, then followed up with the IT-20 for 2010 once information was gathered. Taxpayer states its commitment to comply with all filing requirements going forward.

On a one-time basis Taxpayer's late-filing penalties for 2008 and 2009 are waived. However, Taxpayer is on notice that if similar circumstances arise in the future, Taxpayer's actions would be deemed to be squarely within the negligence standard.

FINDING

Taxpayer's protest is sustained.

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