

Letter of Findings: 02-20110277P
Income Tax
For the Tax Year Ending December 31, 2009

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration–Penalty.

Authority: IC § 6-3-4-12; IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer seeks abatement of a failure to file a composite return penalty.

STATEMENT OF FACTS

Taxpayer has operations in Indiana and files a partnership return in Indiana. The Indiana Department of Revenue ("Department") determined that Taxpayer failed to file a composite schedule for the 2009 tax year and assessed a \$500 penalty for the Taxpayer's failure to list its nonresident partners on the composite schedule pursuant to IC § 6-8.1-10-2.1(j). Taxpayer protests the imposition of penalty. An administrative hearing was not held, this Letter of Findings was written based on the information contained in the protest file.

I. Tax Administration–Penalty.

DISCUSSION

Taxpayer protests the imposition of the \$500 penalty for failure to file a composite return schedule.

IC § 6-3-4-12(h) provides:

A partnership shall file a composite adjusted gross income tax return on behalf of all nonresident individual partners. The composite return must include each nonresident individual partner regardless of whether or not the nonresident individual partner has other Indiana source income.

Additionally, IC § 6-8.1-10-2.1(j) provides:

If a partnership or an S corporation fails to include all nonresidential individual partners or nonresidential individual shareholders in a composite return as required by [IC 6-3-4-12\(h\)](#) or [IC 6-3-4-13\(j\)](#), a penalty of five hundred dollars (\$500) per partnership or S corporation is imposed on the partnership or S corporation.

Under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment – including the negligence penalty – is presumptively valid.

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalties upon a showing that the failure to file the return was based on "reasonable cause and not due to willful neglect." Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that 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...."

Taxpayer has provided sufficient information to establish that its failure to pay the deficiency in this instance was not due to Taxpayer's negligence, but was due to reasonable cause as required by [45 IAC 15-11-2\(c\)](#). However, Taxpayer, along with other similarly situated taxpayers, is reminded that composite return filing for nonresident partners is mandatory under Indiana law with very limited exceptions. While Taxpayer's current circumstances show that Taxpayer acted with reasonable cause, Taxpayer should be on notice that should these circumstances arise again, penalty waiver may not be warranted. Moreover, while the Department recognized reasonable cause in this Taxpayer's specific circumstances, the Department may not recognize reasonable cause for "similarly-situated" taxpayers after publication of this Letter of Findings.

FINDING

Taxpayer's protest is sustained.

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