

Letter of Findings: 01-20120039
Individual Income Tax
For the Tax Year 2009

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ISSUES

I. Individual Income Tax—Imposition.

Authority: IC § 6-8.1-5-1; [45 IAC 3.1-1-2](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayers protest the imposition of income tax.

II. Tax Administration—Imposition of Negligence Penalty.

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

Taxpayers protest the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayers, a husband and wife, jointly filed federal income tax returns. The Indiana Department of Revenue ("Department") conducted an income tax investigation of Taxpayers for the 2009 tax year and assessed additional income tax, interest, and penalty. The Department relied upon the taxpayers' reported federal adjusted gross income per the Internal Revenue Service ("IRS"). Taxpayers protested the proposed assessments. Taxpayers contacted the Department and requested that the Letter of Findings be written based upon the information in the Taxpayers' file without an administrative hearing. Thus, an administrative hearing was not held, and this Letter of Findings results.

I. Individual Income Tax—Imposition.

DISCUSSION

The Department notes that all tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(b), (c); Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

[45 IAC 3.1-1-2](#) defines gross income for individuals, and states that "Indiana residents must report all income as defined by § 61 of the Internal Revenue Code."

Taxpayers maintain that the increase to their federal adjusted gross income resulted from a mistake made when they filed their original 2009 federal income tax return. Taxpayers state that they forgot to attach Form 8917, which substantiates the tuition and fees deduction, to their federal income tax return. Thus, the IRS did not allow the deduction at first. Since then, Taxpayers have filed the Form 8917 and the IRS has accepted it and modified Taxpayers' federal adjusted gross income to what was originally filed on their federal income tax return.

During the hearing, Taxpayers presented documentation that supported their assertions. Taxpayers have provided sufficient documentation to demonstrate that Taxpayers' federal adjusted gross income should be adjusted to reflect the decrease to Taxpayers' federal adjusted gross income that occurs when the tuition and fees deduction is allowed.

FINDING

Taxpayers' protest is sustained.

II. Tax Administration—Imposition of Negligence Penalty.

DISCUSSION

Taxpayers also protested the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

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 standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#)(c) 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.

Since Taxpayers were sustained on their protest to the assessment of adjusted gross income tax, as discussed in Issue I, the issue of the imposition of penalty becomes moot.

FINDING

Taxpayers' protest is sustained.

CONCLUSION

Taxpayers' protest of the assessment of income tax and the imposition of negligence penalty are both sustained.

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