

Letter of Findings Number: 02-20120556P
Corporate Income Tax
For the Period 1998

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ISSUE

I. Tax Administration—Penalty.

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

Taxpayer protests the imposition of the penalty for failure to timely file its corporate income tax return.

STATEMENT OF FACTS

Taxpayer is an Indiana company. Taxpayer operates an auto body shop. Taxpayer started operating in 1976 and is required to file annual Corporate Income Tax returns. In August 2012, the Indiana Department of Revenue ("Department") sent a letter to Taxpayer stating that the refund for the period ending 10/31/2010 was being held due to an unfiled return. The Department intercepted the 2010 refund because a tax return was not filed in 1998. Taxpayer immediately provided a copy of the tax return and contends that they did file the return in 1998. Taxpayer also states that they have been audited by Department since 1998, have not changed their address, and received no notice of an unfiled return until August 2012.

Taxpayer protests the Department's penalty billing assessed for the 1998 tax period. An administrative hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Tax Administration – Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the penalty for failure to timely file its corporate income tax return.

IC § 6-8.1-10-2.1(g) provides that if a person:

[F]ails 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). However, IC § 6-8.1-10-2.1(d) allows that:

If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

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 [\[IC 6-8.1-10-2.1\]](#) 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 states that it had no intent to disregard, nor willfully neglect, the laws of Indiana regarding its tax obligations. Taxpayer states that they did not receive notice that the 1998 Corporate Income tax return was not

filed. Taxpayer questioned why they did not receive notice on a delinquent return within a year from the filing deadline. Taxpayer contends that the Department has audited them at least two times since 1998 and the Department did not tell Taxpayer about a missing tax return until nearly fourteen years later.

Indiana law requires Taxpayer to demonstrate that it had reasonable cause for not filing its Corporate Income Tax return. In order to establish reasonable cause, Taxpayer must demonstrate that it exercised "ordinary business care and prudence" in conducting the duties from which the additional tax and penalty arose. [45 IAC 15-11-2\(c\)](#).

Taxpayer claims that they did not receive notice of the missing tax return before 2012. Taxpayer contends that this should have been addressed during the audits conducted by the Department. Taxpayer has demonstrated a reasonable cause that it exercised ordinary business care and prudence.

The Department finds that Taxpayer has made an affirmative showing of reasonable cause.

FINDING

Taxpayer's protest is respectfully sustained.

Posted: 02/27/2013 by Legislative Services Agency

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