

Letter of Findings: 02-20120676P
Corporate Income Tax Penalty
For the Year 2010

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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

ISSUE

I. Penalty – Corporate Income Tax.

Authority: IC § 6-8.1-5-1(c); IC § 6-8.1-10-2.1(a); IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer argues that the Department of Revenue should exercise its authority to abate a negligence/underpayment penalty.

STATEMENT OF FACTS

Taxpayer is a communications company headquartered outside Indiana but conducting business within this state and within numerous other states. Taxpayer prepared its 2010 Indiana corporate tax return and submitted that return to the Indiana Department of Revenue ("Department"). Taxpayer failed to correctly calculate the amount of tax due. On the ground that Taxpayer had underreported its income, the Department assessed a ten-percent penalty.

Taxpayer disagreed with the penalty assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Penalty – Corporate Income Tax.

DISCUSSION

Taxpayer underreported its Indiana corporate income tax liability. Although Taxpayer paid the additional amount of tax due, the Department assessed a ten-percent penalty. As authority for imposing the penalty, the Department cited to IC § 6-8.1-10-2.1(a) which states:

(a) If a person:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department;

the person is subject to a penalty.

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to... pay the full amount of tax shown on the person's return... or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty."

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 penalty upon a showing that the failure to pay the deficiency 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...."

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.

Taxpayer explains that it "files a combined basis return, including a large number of corporate subsidiaries" and that its apportionment calculation employs a "special methodology outlined in [Tax Policy Directive 6 (June 1992)]." In addition, Taxpayer states that calculation of its liability was complicated "as a result of the multi-year transition from 3-factor multistate apportionment to single-sales factor apportionment." Taxpayer further explains that it "inadvertently experienced software issues when calculating the proper apportionment and tax due calculation" and that the software issue "directly result in the additional amounts of tax shown on the notices."

Taxpayer is a substantial, sophisticated business entity which is fully capable of routinely calculating the amount of income tax owed Indiana. However, there is insufficient information to establish that Taxpayer's error in

this particular instance was so egregious as to constitute "willful neglect" or that Taxpayer failed to exercise the "ordinary business care and prudence" expected of an "ordinary reasonable taxpayer." [45 IAC 15-11-2](#)(b), (c). Based on a "case-by-case" analysis and after reviewing "the facts and circumstances of each taxpayer" the Department agrees that Taxpayer has met its burden under IC § 6-8.1-5-1(c) of establishing that the ten-percent negligence penalty should be abated.

FINDING

Taxpayer's protest is sustained.

Posted: 03/27/2013 by Legislative Services Agency
An [html](#) version of this document.