

Supplemental Letter of Findings Number: 02-20120336P
Corporate Income Tax – Negligence Penalty
For the Fiscal Period Ending June 30, 2011

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ISSUE

I. Tax Administration–Penalty.

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

Taxpayer protests the imposition of the ten percent penalty.

STATEMENT OF FACTS

Taxpayer's protest letter states that it was "assessed a late payment penalty and a late payment interest related to tax year ending June 30, 2011." Taxpayer was also assessed an underpayment penalty. Taxpayer's letter also states that it "is not requesting abatement of the underpayment of estimated tax penalty...." Thus Taxpayer's protest is regarding the late payment penalty. A hearing was scheduled, but Taxpayer did not attend or reschedule the hearing. Subsequently, Taxpayer sent in a request for a rehearing. A rehearing was held, and this Supplemental Letter of Findings results. More facts will be provided as needed below.

I. Tax Administration–Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent late payment penalty imposed due to Taxpayer's failure to remit ninety percent of the full amount of corporate income tax on or before the due date for payment.

Under IC § 6-8.1-10-2.1, 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. The Department also notes that [45 IAC 15-11-2](#) further provides in relevant part:

(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.

The Department also notes that IC § 6-8.1-6-1(c) provides that:

(c) If the Internal Revenue Service allows a person an extension on his federal income tax return, the corresponding due dates for the person's Indiana income tax returns are automatically extended for the same period as the federal extension, plus thirty (30) days. However, the person must pay at least ninety percent (90[percent]) of the Indiana income tax that is reasonably expected to be due on the original due date by that due date, or he may be subject to the penalties imposed for failure to pay the tax. (Emphasis added).

According to Taxpayer's protest letter, Taxpayer's IT-20 was "due on October 17, 2011 with an extension available to April 17, 2012." Taxpayer then states that it "submitted an extension payment in the amount of \$54,580 via tele-pay on October 31, 2011. This payment was due on October 17, 2011."

Taxpayer notes what it calls "a number of complicating factors" regarding the application of payments;

Taxpayer states that it "has a good history of compliance" and characterizes the late extension payment as a

"mere oversight." Taxpayer states:

The October 20th due date for the extension payment falls within the timing for closing the first quarter September 30th accounting records for the Taxpayer.

Taxpayer had a late payment penalty in 2008. Based upon a review of Taxpayer's particular facts, the Department finds that Taxpayer has not established reasonable cause. Taxpayer's "oversight" shows that it did not exercise ordinary business care and prudence.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 04/24/2013 by Legislative Services Agency

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