

**Letter of Findings Number: 02-20130109P  
Tax Administration  
For Tax Year 2009**

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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 a ten percent penalty.

**STATEMENT OF FACTS**

Taxpayer is a business with operations in Indiana. The Indiana Department of Revenue ("Department") determined that Taxpayer had not timely remitted its income tax for the tax year 2009. Taxpayer had filed for a filing extension for its 2009 income tax. Taxpayer filed and remitted the income tax by the extended deadline. The Department issued proposed assessments for a ten percent negligence penalty and interest. Taxpayer protested the imposition of the penalty. An administrative hearing was held and this letter of findings results. Further facts will be supplied as required.

**I. Tax Administration–Penalty.**

**DISCUSSION**

The Department issued proposed assessment for penalty on failure to timely remit income tax for 2009. Taxpayer protests that it had previously had sufficient net operating losses to result in no income tax due, but that in the course of preparing its 2009 income tax return it determined that it did owe Indiana income tax for that year. Taxpayer states that this was its first incidence of owing income tax and that it is now aware that it may owe Indiana income. Taxpayer also states that it has taken steps to ensure that it makes adequate and timely withholdings regarding its income tax obligations. Taxpayer protests the imposition of penalty and requests a waiver of that penalty.

The Department refers to IC § 6-8.1-10-2.1, which states in relevant parts:

(a) If a person:

...

(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.

...

(d) 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.

....

(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2\(b\)](#), which states:

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.

(Emphasis added).

Finally, [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

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.

(Emphasis added).

The Department considered Taxpayer's failure to remit income tax by the original filing deadline to constitute

negligence and so imposed penalty under IC § 6-8.1-10-2.1(a). As a result of the protest process, Taxpayer has affirmatively established that it acted reasonably in its efforts to comply with Indiana's tax filing requirements, as required by [45 IAC 15-11-2\(c\)](#). The penalty will be waived. However, the Department takes this opportunity to notify Taxpayer that it is now aware of its income tax obligations and that penalty may be imposed if this scenario occurs again.

**FINDING**

Taxpayer's protest is sustained.

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