

**Supplemental Letter of Findings: 02-20120676P**  
**Corporate Income Tax Penalty**  
**For the Year 2009 and 2010**

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**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 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 2009 and 2010 Indiana corporate tax returns and submitted those returns 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 ten-percent penalties for both 2009 and 2010.

Taxpayer disagreed with the penalty assessments and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. A Letter of Finding ("LOF") was issued addressing the penalty imposed for the year 2010 on the ground that "Taxpayer has met its burden . . . of establishing that the ten-percent negligence should be abated."

Taxpayer agreed with the substance of the LOF but argued that the LOF failed to address the penalty imposed for the year 2009. In effect, Taxpayer asked the Department to revisit the issue. This Supplemental 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 waive 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 stated that the 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 explained that it "inadvertently experienced software issues when calculating the proper apportionment and tax

due calculation" and that the software issue "directly resulted in the additional amounts of tax shown on the notices."

The Department erred when it failed to fully address the penalties for both the years 2009 and 2010 in the original LOF. Taxpayer correctly points out that the circumstances which led to the imposition of the 2010 penalty are identical to the circumstances which led to the imposition of the 2009 penalty. Similarly, the standards under which penalties may be abated are applicable to both the 2009 and 2010 penalty.

As explained in the original LOF, Taxpayer is a substantial, sophisticated business entity which is fully capable of routinely calculating the amount of income tax owed Indiana. There is insufficient information to establish that Taxpayer's error in these circumstances 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 for both the years 2009 and 2010.

**FINDING**

Taxpayer's protest is sustained.

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