

**Letter of Findings Number: 18-20130278P
Tax Administration
For Tax Year 2011**

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ISSUE

I. Tax Administration—Estimated Tax Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-5.5-7-1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of an estimated tax penalty.

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") issued a proposed assessment for 2011 Financial Institution Tax ("FIT"), which included a proposed penalty. Taxpayer filed a protest, and an administrative hearing was held with this Letter of Findings resulting. Further facts will be supplied as required.

I. Tax Administration—Estimated Tax Penalty.

DISCUSSION

The Department notes that 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 an assessment of a penalty – is presumptively valid. The Department also notes that regarding penalties, IC § 6-5.5-7-1 states:

(a) The penalty prescribed by [IC 6-8.1-10-2.1](#)(b) shall be assessed by the department on a taxpayer who fails to make payments as required in [IC 6-5.5-6](#). However, no penalty shall be assessed for a quarterly payment if the payment equals or exceeds:

- (1) twenty percent (20[percent]) of the final tax liability for the taxable year; or
- (2) twenty-five percent (25[percent]) of the final tax liability for the taxpayer's previous taxable year.

(b) The penalty for an underpayment of tax on a quarterly return shall only be assessed on the difference between the actual amount paid by the taxpayer on the quarterly return and the lesser of:

- (1) twenty percent (20[percent]) of the taxpayer's final tax liability for the taxable year; or
- (2) twenty-five percent (25[percent]) of the taxpayer's final tax liability for the taxpayer's previous taxable year.

Turning to Taxpayer's protest, Taxpayer's protest letter states in relevant part:

[Taxpayer] did not file a return in Indiana until late 2011 when it was audited and tax was assessed. Part of the audit agreement was that any penalties due for late payment of the 2009-2011 returns which were not under audit would be abated. I have attached a copy of the agreement.

Once an agreement was signed, [Taxpayer] began filing outstanding returns and timely paying estimated tax payments. There was no liability in 2011 until the audit was settled and payments were timely made the next quarter. Every effort was made to follow the agreement and make adequate payments with the information available at that time. Due to extenuating circumstances, I ask that you abate the penalty of \$81,093.

Taxpayer references a settlement agreement that Taxpayer entered into with the Department. Since Taxpayer invokes the settlement agreement in its protest, the Department will address it to the extent necessary in this Letter of Findings.

The settlement agreement states that in order to avoid penalty for 2011 that Taxpayer has to pay all estimated Financial Institution Tax on or before a specific date—October 15, 2011. Taxpayer did not make its first estimated payment for FIT until almost two months after the due date. Taxpayer did not receive approval for electronic fund transfer ("EFT") payments until ten days after the due date (October 25, 2011), and did not make the actual payment until December 14, 2011.

The Department also 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.)

[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.

Taxpayer has not demonstrated reasonable cause for the payment not being made until December. Consequently, the penalty will not be waived.

FINDING

Taxpayer's protest is denied.

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