

**Letter of Findings Number: 03-20130324P
Tax Administration-Penalty and Interest
For the Period 2013**

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ISSUE

I. Tax Administration-Penalty and Interest.

Authority: IC § 6-8.1-10-5; IC § 6-8.1-5-1; IC § 6-8.1-10-1; [45 IAC 15-11-5](#).

Taxpayer protests the imposition of the ten percent penalty and the assessment of interest.

STATEMENT OF FACTS

Taxpayer had a payment to the Indiana Department of Revenue ("Department") that was returned by Taxpayer's banking institution. Based upon this, the Department sent Taxpayer a letter notifying Taxpayer that the payment was due and that it would include a ten percent penalty and interest. The letter also notified Taxpayer in relevant part:

The penalty amount shall be increased to the face value of the payment or one hundred percent (100[percent]) of the unpaid tax, whichever is smaller, if not paid by April 11, 2013.

Taxpayer filed a protest. An administrative hearing was held, and this Letter of Findings results. More facts will be provided below as needed.

I. Tax Administration-Penalty and Interest.

DISCUSSION

Taxpayer's protest letter states that per a discussion with a representative of the Department, Taxpayer's "payment was returned, and a 10[percent] returned payment penalty [was] assessed along with interest."

Taxpayer's letter further states:

This payment, which is a first quarter 2013 estimated tax payment, was made by ACH Debit. The payment was made by ACH Debit to be compliant with the mandatory requirements that any corporation which has an AGI greater than \$5,000 transmit funds by electronic funds transfer.

The statute at issue, IC § 6-8.1-10-5, states:

(a) If a person makes a tax payment with a check, credit card, debit card, or electronic funds transfer, and the department is unable to obtain payment on the check, credit card, debit card, or electronic funds transfer for its full face amount when the check, credit card, debit card, or electronic funds transfer is presented for payment through normal banking channels, a penalty of ten percent (10[percent]) of the unpaid tax or the value of the check, credit card, debit card, or electronic funds transfer, whichever is smaller, is imposed.

(b) When a penalty is imposed under subsection (a), the department shall notify the person by mail that the check, credit card, debit card, or electronic funds transfer was not honored and that the person has ten (10) days after the date the notice is mailed to pay the tax and the penalty either in cash, by certified check, or other guaranteed payment. If the person fails to make the payment within the ten (10) day period, the penalty is increased to one hundred percent (100[percent]) multiplied by the value of the check, credit card, debit card, or electronic funds transfer, or the unpaid tax, whichever is smaller.

(c) If a person has been assessed a penalty under subsection (a) more than one (1) time, the department may require all future payments for all listed taxes to be remitted with guaranteed funds.

(d) If the person subject to the penalty under this section can show that there is reasonable cause for the check, credit card, debit card, or electronic funds transfer not being honored, the department may waive the penalty imposed under this section. (Emphasis added).

Furthermore, [45 IAC 15-11-5](#) addresses "reasonable cause," stating:

For purposes of [IC 6-8.1-10-5](#), reasonable cause for waiving the penalty shall constitute circumstances which were totally beyond the control of the taxpayer. Determination of reasonable cause is at the discretion of the department. (Emphasis added).

Thus under [45 IAC 15-11-5](#) in order for a taxpayer to establish "reasonable cause" the taxpayer must show that the "circumstances which were totally beyond the control of the taxpayer." In the case at hand, Taxpayer states in pertinent part:

Since AGI has exceeded \$5,000 for several prior years, it was assumed by [Company l's] tax department that [Taxpayer's] previous payments had been made to the Indiana Department of Revenue by the ACH Debit method. Due to these unknown circumstances, the Indiana originator ID was inadvertently not set up with processing bank, which resulted in the payment being returned.

Taxpayer also notes in a follow-up e-mail to the Department:

Upon notice of the returned payment, a certified check was cut on April 10th, 2013 for the full amount of tax

owed as well as interest and penalties This payment was received by the Indiana Department of Revenue on April 10th, 10 days before the original due date for 1st quarter estimated payments.

IC § 6-8.1-5-1(c) states in relevant part that, "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Under [45 IAC 15-11-5](#) Taxpayer must establish that the "circumstances which were totally beyond the control of the taxpayer." Taxpayer has not shown this; Taxpayer's explanation is that the company that acquired it "assumed" that the "previous payments had been made to the Indiana Department of Revenue by the ACH Debit method." Thus the circumstances were not totally beyond the control of Taxpayer.

Regarding the interest, the Department notes that under IC § 6-8.1-10-1(e) interest cannot be waived.

FINDING

Taxpayer's protest is denied.

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