

DEPARTMENT OF STATE REVENUE

03-20140018P.LOF

Letter of Findings Number: 03-20140018P
Tax Administration
For Tax Years 2011 and 2012

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUE

I. Tax Administration – Negligence Penalty.

Authority: IC § 6-8.1-5-1(c); IC § 6-8.1-10-2.1; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of ten percent negligence penalties.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation. During an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not timely filed its WH-3 forms for the tax years 2011 and 2012 and imposed a penalty for each year. Taxpayer protested the imposition of the penalties. An administrative hearing was held, and the following Letter of Findings results. Further facts will be supplied as required.

I. Tax Administration – Negligence Penalty.

DISCUSSION

During an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not timely filed its WH-3 forms for the tax years 2011 and 2012 and imposed a penalty for each year. Taxpayer protested the imposition of the penalties.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). The issue before the Department is whether Taxpayer met its burden to prove the Department's assessment is incorrect.

A taxpayer who fails to file a return "is subject to a penalty." IC § 6-8.1-10-2.1(a). The Department shall waive the penalty if the taxpayer demonstrates that the failure to file a required return "was due to reasonable cause and not due to willful neglect." IC § 6-8.1-10-2.1(d); see also [45 IAC 15-11-2](#). The taxpayer may demonstrate reasonable cause by showing affirmatively that it used "ordinary business care and prudence" in not filing a required return. Whether a taxpayer demonstrates reasonable cause for penalty purposes is a fact-sensitive question and determined on a case-by-case basis. [45 IAC 15-11-2](#)(b) and (c).

Taxpayer has demonstrated it had reasonable cause in its failure to file the required WH-3s. Taxpayer's protest is sustained. However, Taxpayer is now aware of its withholding tax filing obligations and a penalty may be imposed if this scenario occurs again.

FINDING

Taxpayer's protest is sustained.

Posted: 05/28/2014 by Legislative Services Agency

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