

**Letter of Findings Number: 02-20140270P**  
**Tax Administration**  
**For Tax Year 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

**ISSUE**

**I. Tax Administration—Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#); I.R.C. § 338(h)(10).

Taxpayer protests the imposition of penalties.

**STATEMENT OF FACTS**

Taxpayer was an S Corporation whose shareholders are and were non-residents of Indiana. In December 2012, another company purchased Taxpayer. The purchaser had the option to either account for the purchase as a "stock sale" or make an election under I.R.C. § 338(h)(10) to treat the sale as a "purchase of assets." Taxpayer had made estimated tax payments in October 2012 in the amount of \$35,000. However, the purchaser elected to make the transaction a purchase of assets in August of 2013, the effect of which was to cause Taxpayer to realize further taxable income on the deemed sale of its assets. The additional tax due was \$50,355.

The Indiana Department of Revenue ("Department") determined that Taxpayer had underpaid the individual income tax and assessed Taxpayer with a ten percent negligence penalty and interest calculated on the unpaid tax amount. Taxpayer protests the imposition of the penalty. An administrative hearing was held, and the following Letter of Findings results. Further facts will be supplied as required.

**I. Tax Administration—Penalty.**

**DISCUSSION**

The Department determined that Taxpayer had underpaid its individual income tax and assessed Taxpayer with a ten percent negligence penalty, which Taxpayer protests. The Department will determine whether the penalty imposed shall be waived.

A taxpayer who "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 . . . is subject to a penalty." IC § 6-8.1-10-2.1(a). The Department shall waive the negligence penalty if the taxpayer demonstrates that the failure to pay the outstanding taxes "was due to reasonable cause and not due to negligence." [45 IAC 15-11-2](#); see also IC § 6-8.1-10-2.1(d). A taxpayer's ignorance of Indiana's tax laws, "carelessness, thoughtlessness, disregard or inattention to duties placed upon [it] by the Indiana Code or department regulations" constitutes negligence. The taxpayer may demonstrate reasonable cause by showing affirmatively that it used "ordinary business care and prudence" in not paying the outstanding taxes. 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).

In this case, Taxpayer affirmatively demonstrated that it had reasonable cause for the underpayment of tax. The purchaser made an election well after the April 15, 2013, filing date, and the income reported from the purchase of assets was significantly more than Taxpayer anticipated. Taxpayer's underpayment of income tax resulted from actions of other parties outside its control and not their own negligence. Upon receiving the new information, Taxpayer acted promptly to report and pay the additional tax liability. Taxpayer demonstrated reasonable cause for its underpayment of tax, and the penalty shall be waived. Taxpayer's protest is therefore sustained.

**FINDING**

Taxpayer's protest is sustained.

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