

Letter of Findings Number: 02-20140302P
Tax Administration
For Tax Years 2007-2012

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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—Penalties.

Authority: IC § 6-3-1-8; IC § 6-3-4-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#); I.R.C. § 61; Treas. Reg. § 1.61-8.

Taxpayer protests the imposition of failure to timely file penalties.

STATEMENT OF FACTS

Taxpayer is a corporation which owns real estate in Indiana. An unrelated party lived on the real estate and paid all of Taxpayer's expenses for the maintenance and upkeep of the property including the mortgage, insurance, and real estate taxes. The Indiana Secretary of State dissolved Taxpayer's corporation due to a lack of timely entity report filings. Taxpayer filed the necessary paperwork to get its corporate status reinstated. As part of the process, the Indiana Secretary of State asked the Indiana Department of Revenue ("Department") for a tax clearance letter.

After being contacted by the Secretary of State for the tax clearance status, the Department requested that Taxpayer file tax returns for the open years. On January 20, 2014, Taxpayer filed zero returns for the tax years in question. Upon receipt of the returns, the Department determined that Taxpayer had not timely filed the Indiana adjusted gross income tax returns for the tax years 2007, 2008, 2009, 2010, 2011, and 2012 and imposed penalties for those years. Taxpayer protested the imposition of the failure to timely file penalties, and this Letter of Findings results. Further facts will be supplied as required.

I. Tax Administration—Penalties.

DISCUSSION

The Department issued proposed assessments for penalties due to Taxpayer's failure to timely file Indiana adjusted gross income tax returns for the tax years 2007-2012 pursuant to IC § 6-8.1-10-2.1(g). Taxpayer protests the imposition of penalties and requests a waiver of those penalties. Taxpayer states that it only filed the returns for those years at the request of the Department in order to receive a tax clearance with the Indiana Secretary of State. Taxpayer maintains that it otherwise did not have a filing requirement because it had no income to report for those years. Taxpayer maintains that the waiver of the penalties is warranted.

A. Corporate Adjusted Gross Income Tax Return: Filing Requirements.

IC § 6-3-4-1 is the statute which governs when a tax return filing is required. IC § 6-3-4-1(3) provides, "Returns with respect to [the adjusted gross income tax] shall be made by . . . every corporation having for the taxable year **any gross income from sources within the state of Indiana.**" (**Emphasis added**). "Gross income" is defined in IC § 6-3-1-8 as "gross income as defined by section 61(a) of the Internal Revenue Code." I.R.C. § 61 defines "gross income" as "all income from whatever source derived, including (but not limited to) . . . rents. . . ." Treas. Reg. § 1.61-8 states that rental income of a lessor includes the amounts of any expenses of the lessor that a lessee pays.

Taxpayer owned real estate in Indiana. For the tax years in question, Taxpayer allowed an unrelated party to live on the Indiana real estate and the unrelated party paid all of Taxpayer's expenses for the property. Pursuant to Treas. Reg. § 1.61-8, Taxpayer had rental income in the amount of the expenses that the lessee paid. Since the real estate in question is located in Indiana, there is no question that Taxpayer had gross income from Indiana sources. Since IC § 6-3-4-1 requires any corporation that has gross income from Indiana source to file an Indiana

adjusted gross income tax return, Taxpayer was required to file Indiana adjusted gross income tax returns for the years in question.

Accordingly, Taxpayer's protest to the imposition of the failure to timely file penalties based upon Taxpayer not having an Indiana filing requirement is respectfully denied.

B. Failure to Timely File.

On January 20, 2014, Taxpayer filed returns reporting no tax liability for the 2007, 2008, 2009, 2010, 2011, and 2012 tax years. The Department determined that Taxpayer had not timely filed the Indiana adjusted gross income tax returns and imposed penalties for those years. Taxpayer protests the imposition of these penalties.

The Department refers to IC § 6-8.1-10-2.1(g), which states:

A person who fails to file a return for a listed tax that shows no tax liability for a taxable year, other than an information return (as defined in section 6 of this chapter), on or before the due date of the return shall pay a penalty of ten dollars (\$10) for each day that the return is past due, up to a maximum of two hundred fifty dollars (\$250).

IC § 6-8.1-10-2.1(d), which states:

If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, 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.

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Next, the Department 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.

Finally, [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.

In this case, the Department determined that Taxpayer did not file Indiana adjusted gross income tax returns for 2007-2012. The Department imposed penalties under IC § 6-8.1-10-2.1(g). As a result of the protest process, Taxpayer has not affirmatively established that it acted reasonably, as required by IC § 6-8.1-10-2.1(d) and [45 IAC 15-11-2\(b\)](#). Therefore, the failure to timely file penalties will be not waived.

FINDING

Taxpayers' protest is respectfully denied.

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