

Letter of Findings: 01-20140257
Individual Income Tax
For the Year 2011

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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. Individual Income Tax - Penalties and Interest.

Authority: IC § 6-8.1-10-1(a); IC § 6-8.1-10-2.1(a)(2); IC § 6-8.1-10-2.1(d); IC § 6-8.1-5-1(c); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer argues that he is entitled to an abatement of penalty and interest.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who files and pays Indiana individual income tax. In the case of his 2011 liability the original assessment was unpaid, but Taxpayer made a series of 10 payments to resolve the original unpaid liability. During the period during which payments were made, additional interest was incurred. Taxpayer argues that he is entitled to abatement of interest and penalties. Taxpayer submitted a protest challenging the imposition of the interest and penalties. This Letter of Findings results.

I. Individual Income Tax - Penalties and Interest.

DISCUSSION

Taxpayer owes a remaining amount of 2011 state income tax. Although a portion of the 2011 liability was paid, an additional amount of approximately \$450 remains. Taxpayer believes he is entitled to an abatement of past and current interest charges and an abatement of past and present penalties.

A. Interest.

Indiana imposes interest on overdue tax pursuant to IC § 6-8.1-10-1(a) which states:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

In the case of the interest assessed, the Department has no discretion to abate or adjust the amount of interest owed.

B. Penalty.

IC § 6-8.1-10-2.1(a)(2) requires a ten-percent penalty if the taxpayer "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."

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty."

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that 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 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 the late payment penalty - is presumptively valid.

In this case, Taxpayer states he "feel[s] I have already paid more than the actual balance" that his "case [identification] has been wrong since the inception of the payment plan, and each time I call the case number does not exist." In addition, Taxpayer states he finds "no reason for the agency to charge me all these costs, charges, penalties, and interest and I was a victim of the system."

The imposition of the penalty is straightforward; the penalty is imposed if a taxpayer "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." IC § 6-8.1-10-2.1(a)(2). Taxpayer argues that mistakes were made during the period in which he made payments on the 2011 liability. However, Taxpayer says nothing which goes to the heart of the matter. Was the late payment due to "reasonable cause" and did the Taxpayer act with "ordinary care and prudence" in failing to pay the initial amount owed as it was first imposed. [45 IAC 15-11-2\(c\)](#). Although Taxpayer may well have had difficulties during the period of time in which the payments were made and during the period of time that he was dealing with the Department, there is no information which would warrant abatement of the penalty.

FINDING

Taxpayer's protest is respectfully denied.

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