DEPARTMENT OF STATE REVENUE

02-20140381P.LOF

Letter of Findings Number: 02-20140381P
Late Payment Penalty
For Tax Years 2004, 2005, and 2006

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 This document is effective on its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUE

I. Tax Administration - Late Payment Penalty.

Authority: IC § 6-8.1-10-2.1; IC § 6-3-4-1; 45 IAC 15-11-2.

Taxpayer protests the imposition of a late payment penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana business that filed its 2004, 2005, and 2006 corporate income tax returns in 2008. The Department assessed late payment penalties for all three years, but then abated the penalty relating to the 2005 year as a matter of routine courtesy. Taxpayer protests the remaining assessments of the $250 penalty. A hearing was held on Taxpayer's protest. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Tax Administration - Late Payment Penalty.

DISCUSSION

Taxpayer protests the imposition of a penalty for late payment of its income tax for 2004 and 2006. Taxpayer claimed that it was unaware that it had a filing obligation.

The Department refers to IC § 6-8.1-10-2.1, which states in relevant parts:

> (d) 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.
> . . .
> (g) 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).

(Emphasis added).

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. (Emphasis added).

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. (Emphasis added).

Under IC § 6-3-4-1(3), a corporation has an obligation to file returns for any year it has any " gross income from sources within the state of Indiana." Generally, ignorance of the law is treated as negligence. 45 IAC 15-11-2. Therefore, Taxpayer has not met its burden to show that it was not willfully negligent in not timely filing its returns for the years in question.

FINDING

Taxpayer's protest is respectfully denied.

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