

**Letter of Findings: 02-20140091P
Negligence Penalty
For the 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 - Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer requests that the Department abate the negligence penalty.

STATEMENT OF FACTS

Taxpayer is a Company that does business in Indiana. Prior to 2012, Taxpayer had an issue with the exclusion of foreign royalties from the Indiana tax base. The issue was settled in late 2012. Taxpayer did not make estimated payments for the first three quarters of 2012. Taxpayer made the 4th quarter estimated tax payment. The Department then assessed a ten percent penalty. Taxpayer protests the imposition of the penalty. Taxpayer requested that the Department abate the negligence penalty. A phone hearing was conducted. Further facts will be supplied as required.

I. Tax Administration - Negligence Penalty.

DISCUSSION

The Department determined that Taxpayer had underpaid its corporate 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 instance, Taxpayer contends that Taxpayer did not make the 2012 estimated payments because Taxpayer was in the process of reaching a settlement with the Department regarding the exclusion of foreign royalties from the Indiana tax base issue. The outcome of the settlement agreement would dictate the amount owed to the Department for 2012. The Department's records confirm that an agreement was finalized in 2013. The Department's records confirm that Taxpayer made the 4th quarter estimated payment.

In this case, Taxpayer affirmatively demonstrated that it had reasonable cause for the delay in making the estimated payments. Taxpayer's delay in making the estimated payments resulted from finalizing a settlement agreement on a substantive tax matter and not Taxpayer's own negligence. Upon receiving a determination of the tax issue, Taxpayer acted promptly to report and pay the estimated tax liability. Taxpayer demonstrated reasonable cause for its delay in making the estimated payments, and the penalty shall be waived. Taxpayer's protest is therefore sustained.

FINDING

Taxpayer's protest of the imposition of negligence penalty is sustained.

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