

**Letter of Findings Number: 01-20140527
Adjusted Gross Income Tax
For Tax 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The waiver of penalty was warranted. A professional tax preparer used a standard tax preparation software program to calculate the amount due. The software company confirmed that the program had an error which resulted in an inaccurate amount of tax reported.

ISSUE

I. Tax Administration–Negligence Penalty.

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

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayers are a married couple. The Indiana Department of Revenue ("Department") reviewed Taxpayers' 2011 adjusted gross income tax ("AGIT") return and made several adjustments. Those adjustments resulted in a proposed assessment for additional income tax for 2011. Taxpayers initially protested that the original return was correct and that no additional income tax or penalty was due for 2011. After the protest was filed, Taxpayers learned from their tax preparer that the popular tax preparation software he used had an error which led to an incorrect entry on the return. Taxpayers therefore dropped their protest of the AGIT adjustment but continued to protest the imposition of the ten percent negligence penalty. An administrative hearing was conducted and this Letter of Findings results. Further facts will be supplied as required.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayers protest the imposition of a ten percent negligence penalty for the tax year 2011. Taxpayers state that they used a professional tax preparer and that the preparer used a commercially available tax preparation program to prepare Taxpayers' 2011 Indiana AGIT return. Taxpayers believe that these circumstances establish that they acted reasonably in filing their 2011 Indiana AGIT return. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

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

(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.
(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 6-8.1-10-2](#).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).

In the course of the protest process, Taxpayers learned that the tax preparation software company had admitted to Taxpayers' tax preparer that the software had an error which allowed an incorrect entry. That incorrect entry resulted in incorrect calculations of Indiana AGIT for 2011. During the administrative hearing, Taxpayers stated that they understood the Department's adjustments and proposed assessment for additional AGIT, but that they did not believe that the imposition of a negligence penalty was appropriate. Taxpayers believe that they did act reasonably since they hired a professional tax preparer who used commercial tax preparation software.

As provided by IC § 6-8.1-10-2.1(d), the Department shall waive a penalty if the taxpayer in question is able to establish that they acted reasonably in reporting their Indiana taxes. [45 IAC 15-11-2\(c\)](#) states that reasonable cause is demonstrated when a taxpayer demonstrates that they exercised ordinary business care and prudence in carrying out their tax-reporting duties. In the instant case, Taxpayers have established that they exercised ordinary business care and prudence in reporting their 2011 Indiana AGIT. They reasonably relied on a professional tax preparer using commonly available tax preparation software. Therefore, Taxpayers have met the burden imposed under IC § 6-8.1-5-1(c). The ten percent negligence penalty will be waived and only the base income tax plus interest will be due.

FINDING

Taxpayers' protest of the imposition of penalty is sustained.

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