

Letter of Findings: 01-20150200P
Individual Income Tax
For the Years 2007, 2008, and 2010

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Out-of-state individual's protest of late penalties was untimely for certain of the proposed assessments. To the extent that the Department had administrative jurisdiction to address the remaining penalties, the penalties were abated. However, the Department had no authority to abate the statutory interest.

ISSUES

I. Individual Income Tax - Protest Timeliness.

Authority: IC § 6-8.1-5-1(d).

Taxpayer argues that the Department erred when it determined that Taxpayer's protest of 2008, 2009, 2011, and 2012 late penalties was untimely.

II. Individual Income Tax - Late Penalties.

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

Taxpayer maintains that the Department should exercise its discretion to abate 2007, 2008, and 2010 late penalties.

III. Individual Income Tax - Interest.

Authority: IC § 6-8.1-10-1.

Taxpayer asks that the Department abate any interest charges attributable to the late payment of his individual income taxes.

STATEMENT OF FACTS

Taxpayer is an out-of-state resident who failed to file and report Indiana adjusted gross income tax for years 2007, 2008, 2009, 2010, 2011, 2012, and 2013. Belatedly, Taxpayer filed the returns and paid the tax due. The Indiana Department of Revenue ("Department") assessed Taxpayer late penalties. Taxpayer requested that the penalties be abated. In a letter dated January 2, 2015, the Department denied the request. Taxpayer disagreed and filed a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Individual Income Tax - Protest Timeliness.

DISCUSSION

Taxpayer argues that his protest of assessment liability numbers 2008-07002038, 2009-06915974, 2011-06983314, and 2012-06985356 was timely and that the late payment penalties are properly addressed under this administrative review.

Indiana law permits the Department to conduct an administrative hearing and review of proposed assessments if the affected taxpayer submits a protest within 60 days.

The [proposed assessment] shall state that the person has forty-five (45) days from the date the notice is mailed, if the notice was mailed before January 1, 2011, and sixty (60) days from the date the notice is mailed, if the notice was mailed after December 31, 2010, to pay the assessment or to file a written protest. IC § 6-8.1-5-1(d).

Proposed assessment 2008-07002038 was issued September 22, 2014; proposed assessment 2009-06915974 was issued September 3, 2014; proposed assessment 2011-06983314 was issued September 16, 2014; and proposed assessment 2012-06985356 was issued September 16, 2014.

Taxpayer challenged the assessments in a letter dated February 26, 2015, and received by the Department March 3, 2015. Taxpayer's protest of the proposed assessments issued September 22, 2014, September 3, 2014, and September 16, 2014, is untimely because the protest was not submitted within the statutory time limit of 60 days. The Department does not have jurisdiction to address protests submitted outside the time limit set out in IC § 6-8.1-5-1(d).

FINDING

Taxpayer's protest is denied.

II. Individual Income Tax - Late Penalties.

DISCUSSION

Taxpayer challenges the imposition of late penalties on the ground that the failure to file returns and report the correct amount of Indiana adjusted gross income was not attributable to the Taxpayer's negligence. Taxpayer explains:

The [T]axpayer is not sophisticated in the areas of tax law and procedures. The [T]axpayer relied on its Certified Public Accountant (CPA) to correctly prepare and file any and all federal and state income tax returns. Reliance on the skill and/or advice of a professional advisor does constitute reasonable cause, because the [T]axpayer acted in good faith in relying on its CPA to correctly prepare for filing his Indiana tax returns.

Taxpayer protests the imposition of the failure to file penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation, [45 IAC 15-11-2\(b\)](#), clarifies the standard for imposition of the penalty as follows:

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.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2\(c\)](#) as follows:

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. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

CPA or not, Taxpayer has the ultimate responsibility for filing and reporting Indiana state taxes. In this limited instance, Taxpayer's reliance on his CPA was reasonable under the circumstances and the Department agrees that the late penalties 2007-07266322, 2008-07444908, and 2010-07147974 should be abated.

FINDING

Taxpayer's protest is sustained.

III. Individual Income Tax - Interest.

DISCUSSION

Taxpayer asks that the Department waive the interest charges imposed on his 2007, 2008, 2009, 2010, 2011, 2012, and 2013 individual income taxes.

Under IC § 6-8.1-10-1(a), if a person incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

The Department has no discretion regarding the imposition of interest. Under IC § 6-8.1-10-1, interest may not be abated.

FINDING

Taxpayer's protest is denied.

SUMMARY

The Department had no authority to address the protest of assessments issued September 22, 2014, September 3, 2014, and September 16, 2014, but agrees that the remaining late penalties should be abated. The statutory interest charges may not be abated.

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