

**Letter of Findings Number: 02-20150170P**  
**Adjusted Gross Income Tax**  
**For Fiscal Tax Years Ending July 3, 2011 and June 30, 2013**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Business was able to provide documentation showing that it had carryover income tax payments from previous years and so did not underpay its estimated income tax payments for the years in question. The waiver of underpayment penalties was appropriate.

### ISSUE

#### **I. Tax Administration—Underpayment of Estimated Tax Penalty.**

**Authority:** IC § 6-3-4-4.1; IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 15-11-2](#).

Taxpayer protests proposed assessments for penalties on the underpayment of estimated tax.

### STATEMENT OF FACTS

Taxpayer is an out-of-state business with Indiana-sourced income. After a review of Taxpayer's corporate tax accounts, the Indiana Department of Revenue ("Department") determined that there were discrepancies between the numbers provided by Taxpayer and the numbers in the Department's system. The Department made adjustments to reconcile these discrepancies which reduced the overpayments Taxpayer made in the fiscal tax years 2011, 2012, and 2013. This in turn resulted in the Department's determination that Taxpayer had underpaid its estimated tax payments in the fiscal tax years ending on July 3, 2011 ("2011") and June 30, 2013 ("2013"). The Department therefore issued proposed assessments for penalties on those underpayments. Taxpayer protested the imposition of those penalties. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

#### **I. Tax Administration—Underpayment of Estimated Tax Penalty.**

### DISCUSSION

Taxpayer protests the imposition of two penalties for underpayment of estimated adjusted gross income tax. One penalty applied to the fiscal tax year 2011 and the other penalty applied to the fiscal tax year 2013. In both cases, the Department determined that Taxpayer had underpaid its estimated Indiana adjusted gross income tax payments for the respective year. Taxpayer protests that in both cases it had carryover amounts from the previous year which it believed had been applied to the first quarterly estimated payment of each of the years at issue.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the]

statute even over an equally reasonable interpretation by another party." Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

The relevant statute regarding estimated income tax payments is IC § 6-3-4-4.1, which states in relevant parts:

- ...
- (c) Every corporation subject to the adjusted gross income tax liability imposed by this article shall be required to report and pay an estimated tax equal to the lesser of:
- (1) twenty-five percent (25[percent]) of such corporation's estimated adjusted gross income tax liability for the taxable year; or
  - (2) the annualized income installment calculated in the manner provided by Section 6655(e) of the Internal Revenue Code as applied to the corporation's liability for adjusted gross income tax.
- A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated adjusted gross income tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing estimated adjusted gross income tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year. The department shall prescribe the manner and forms for such reporting and payment.
- (d) The penalty prescribed by [IC 6-8.1-10-2.1](#)(b) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:
- (1) the annualized income installment calculated under subsection (c); or
  - (2) twenty-five percent (25[percent]) of the final tax liability for the taxpayer's previous taxable year.
- In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25[percent]) of the corporation's final adjusted gross income tax liability for such taxable year.
- (e) The provisions of subsection (c) requiring the reporting and estimated payment of adjusted gross income tax shall be applicable only to corporations having an adjusted gross income tax liability which, after application of the credit allowed by [IC 6-3-3-2](#) (repealed), shall exceed two thousand five hundred dollars (\$2,500) for its taxable year.
- ....

Taxpayer states that the estimated payments for both 2011 and 2013 were covered by overpayments from 2010 and 2012 respectively. Taxpayer believed that these carryovers from the previous years would cover portions of its estimated tax payments for 2011 and 2013. Taxpayer then made other quarterly estimated payments to complete its estimated tax payment duties. Taxpayer therefore believes that it satisfied the filing requirements listed in IC § 6-3-4-4.1(c) and that imposition of the penalty provided by IC § 6-3-4-4.1(d) is not warranted.

The penalty provided by IC § 6-3-4-4.1(d) directly refers to the penalty provided by IC § 6-8.1-10-2.1(b). IC § 6-8.1-10-2.1 states in relevant parts:

- (a) If a person:
- (1) fails to file a return for any of the listed taxes;
  - (2) 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;
  - (3) incurs, upon examination by the department, a deficiency that is due to negligence;
  - (4) fails to timely remit any tax held in trust for the state; or
  - (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department; the person is subject to a penalty.
- (b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10[percent]) of:
- (1) the full amount of the tax due if the person failed to file the return;
  - (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
  - (3) the amount of the tax held in trust that is not timely remitted;
  - (4) the amount of deficiency as finally determined by the department; or
  - (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.
- ...

(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.

(e) A person who wishes to avoid the penalty imposed under this section must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.

....

(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).

In the instant case, Taxpayer has affirmatively established that it exercised ordinary business care and prudence in carrying out its estimated tax remittance duties. The Department's adjustments were correct and did result in reduced carryforward of overpayments, but those adjustments occurred after Taxpayer had filed its estimated income tax payments for 2011 and 2013. Taxpayer's estimated tax payments for 2011 and 2013 were accurate reflections of the estimated tax and overpayments prior to the Department's adjustments. Therefore, the Department's reductions of overpayments were correct, but the imposition of penalties was not.

### FINDING

Taxpayer's protest is sustained.

*Posted: 08/26/2015 by Legislative Services Agency*

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