

**Letter of Findings: 02-20140633
Penalty
For Tax Years 2010-2011**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Company demonstrated that underpayment penalties should be abated.

ISSUE

I. Tax Administration - Penalty.

Authority: IC § 6-3-4-4.1.

Taxpayer requests that the Department abate the penalty.

STATEMENT OF FACTS

Taxpayer is a company conducting business in Indiana. Taxpayer was audited by the Indiana Department of Revenue ("Department") for 2010 and 2011 tax years. The audit adjusted Taxpayer's apportionment percentage from 94.40 percent to 94.42 percent (for the 2010 tax year) and from 78.08 percent to 78.15 percent (for the 2011 tax year). As a result, in addition to underpayment penalties previously assessed, Taxpayer was assessed additional tax and an additional underpayment penalty for 2011 tax year.

Taxpayer protests the imposition of the underpayment penalty including underpayment penalties previously assessed for both tax years. A hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Tax Administration - Penalty.

DISCUSSION

Taxpayer requests that the Department abate the underpayment penalties.

IC § 6-3-4-4.1 outlines the requirement of estimated payment for a corporation subject to the Indiana adjusted gross income tax liability. Specifically, under IC § 6-3-4-4.1(c) a corporation is "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 penalty is imposed under IC § 6-3-4-4.1(d) for a corporation's failure to timely report and remit a sufficient amount, which provides, as follows:

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.

Taxpayer in this instance demonstrated that the imposition of the underpayment penalties is not appropriate.

FINDING

Taxpayer's protest is sustained.

Posted: 01/27/2016 by Legislative Services Agency
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