

**Letter of Findings Number: 02-20140617**  
**Income Tax**  
**For Tax Years 2008 - 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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**

Retail business that failed to properly keep records and documentation did not meet its burden of proof regarding its protest.

### **ISSUES**

#### **I. Income Tax–S-corporation**

**Authority:** IC § 6-8.1-5-1; 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).

Taxpayer protests the proposed assessment of income tax that carried through from the S-corporation to the individual owner.

#### **II. Tax Administration–Penalties and Interest.**

**Authority:** IC § 6-8.1-10-2.1; IC § 6-8.1-10-1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of penalties and interest that carried through from the S-corporation to the individual owner.

### **STATEMENT OF FACTS**

Taxpayer is a retailer operating a convenience store that sells gasoline. Taxpayer is incorporated and elected to file as an S-corporation. The Indiana Department of Revenue ("Department") conducted an audit for income tax, among other taxes that were audited, which resulted in proposed assessments of tax that carried through from the S-corp to the individual owner. Taxpayer protested and an administrative hearing was held; this Letter of Findings results. More facts will be provided as needed below.

#### **I. Income Tax–S-corporation.**

### **DISCUSSION**

As a threshold issue, it is 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 audit was for longer than three years because, pursuant to [45 IAC 15-5-7](#), "if the adjusted gross income is

under reported by more than 25[percent], the statute is open for an additional three years." Thus the "statute of limitations for the years of 2008 through 2013 is now six years, not three." In a separate Letter of Findings (Letter of Findings 04-20140620), the Department denied Taxpayer's protest of the proposed assessments for sales and use tax. In the instant case, as an S-corp the additional income of the business flowed to the individual owner. The protest of the individual income tax proposed assessment will be addressed in another Letter of Findings. Thus Taxpayer's protest of the S-corporation's tax is denied, as is any protest of penalties and interest. Taxpayer has not met the burden of proving the proposed assessments for income tax incorrect, as required by IC § 6-8.1-5-1(c).

### FINDING

Taxpayer's protest is denied.

## II. Tax Administration—Penalties and Interest.

### DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty. Interest is imposed pursuant to IC § 6-8.1-10-1, and the Department notes that waiver of interest is not permitted under IC § 6-8.1-10-1(e). The waiver of the penalty is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides in relevant part:

(b) "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.

(c) 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.

(Emphasis added).

Taxpayer failed to properly keep records as required by law. As noted by [45 IAC 15-11-2\(b\)](#), "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." Taxpayer has not established reasonable cause, thus its protest of the penalty is denied.

### FINDING

Taxpayer's protest of the penalties and interest is denied.

### SUMMARY

Taxpayer's protest of the proposed assessments is denied, as is Taxpayer's protest of the penalties and interest.

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