

**Letter of Findings Number: 02-20160266P
Tax Administration
For Tax Year 2014**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 provided adequate documentation and analysis to warrant waiver of penalty. Penalty is therefore waived.

ISSUE

I. Tax Administration–Penalty.

Authority: IC § 6-3-4-4.1; IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state company doing business in Indiana. For the tax year 2014, Taxpayer made estimated payments of income tax. The Indiana Department of Revenue ("Department") determined that Taxpayer's estimated payments did not meet the minimum threshold to meet the statutory requirements for estimated payments. The Department therefore issued proposed assessments for underpayment penalty and interest. Taxpayer disagreed with the imposition of penalty. Taxpayer submitted a protest to that effect. An administrative hearing was conducted and this Letter of Findings results. Further facts will be supplied as required.

I. Tax Administration–Penalty.

DISCUSSION

Taxpayer is an out-of-state company doing business in Indiana. During the tax year 2014, Taxpayer made estimated income tax payments pursuant to IC § 6-3-4-4.1. The Department determined that Taxpayer did not meet the minimum reporting requirements of IC § 6-3-4-4.1 and so imposed a ten percent penalty. 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).

IC § 6-3-4-4.1 provides in pertinent 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.

(Emphasis added).

Since IC § 6-3-4-4.1(d) makes direct reference to IC § 6-8.1-10-2.1(b), the Department refers to IC § 6-8.1-10-2.1, which 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.

....

(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).

Taxpayer's protest is in regards to the Department's assessment of penalty. In the course of the protest process,

Taxpayer established that the estimated payments it made for 2014 were for similar amounts to those it made for 2013. However, due to two unanticipated divestitures in 2014, its income was significantly higher than anticipated for 2014. After review of the documentation and analysis provided in the protest process, the Department may waive penalty as provided by [45 IAC 15-11-2\(c\)](#). IC § 6-8.1-10-2.1 requires a taxpayer to show that failure to remit taxes in a timely manner is due to reasonable cause. Taxpayer has demonstrated reasonable cause and as a result Taxpayer's protest is sustained. Taxpayer has met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment for penalty wrong.

FINDING

Taxpayer's protest is sustained.

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