

Letter of Findings: 02-20160508P
Penalty
For Tax Period (Short Year) Ended April 29, 2015

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Corporation provided sufficient documentation to support its penalty abatement request.

ISSUE

I. Tax Administration - Penalty.

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

Taxpayer requests that the Department abate the negligence penalty.

STATEMENT OF FACTS

Taxpayer, a company, is doing business in Indiana. In April 2015, Taxpayer was acquired by another corporation and became a division of that company. Taxpayer timely filed an extension request to prepare its last and short year return. The Indiana Department of Revenue ("Department") granted the request and the extended due date is August 17, 2015. Taxpayer did not remit any payment of tax at the time the extension request was filed.

Taxpayer filed its last return and remitted the base tax due in February 2016. The Department processed the last return. The Department subsequently imposed additional statutory interest and penalty.

Taxpayer agrees that it is responsible for the statutory interest. Taxpayer however requested that the Department abate the ten percent penalty assessment. A phone hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Tax Administration - Penalty.

DISCUSSION

The Department imposed a ten percent negligence penalty for the tax period in question because Taxpayer filed its return and remitted the tax due after the statutory due date. Taxpayer requested that the Department abate the penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence or late penalty if the taxpayer:

- (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.

[45 IAC 15-11-2](#)(b) further 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.

The Department may waive a negligence penalty as provided in [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.

In this instance, Taxpayer requested that the Department abate the penalty for various reasons. Primarily, Taxpayer asserted that its actions were due to reasonable cause and not due to negligence. Taxpayer explained that it generally complies with the Indiana tax law and maintained a good history of compliance. Taxpayer further stated that the tax period in question was its last and short year because it was acquired and merged into another company. Taxpayer thus asserted that this was a unique and non-recurrent event as the merger caused some confusion among its employees who were responsible for filing the return and remitting the tax. Since Taxpayer became a division of the acquired company, going forward, the issue will not recur.

After a review of the Department's records, the Department agrees that Taxpayer demonstrates that the penalty should be abated.

FINDING

Taxpayer's protest of the imposition of penalty is sustained.

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