

**Letter of Findings: 02-20160578****Negligence Penalty****For Tax Periods Ending March 31, 2013, March 31, 2014, and March 31, 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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**

The Department agreed to abate negligence penalty assessed on Business because Business showed it acted promptly to correct tax filing errors caused by a bug in their tax software.

**ISSUE****I. Tax Administration - Negligence Penalty.**

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

Taxpayer protests the imposition of the ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is an Indiana business. Taxpayer voluntarily amended Indiana corporate income tax returns for the periods ending March 31, 2013, through March 31, 2015, after it determined that the net operating loss carryforward reported on its original returns had not been filed correctly due to a bug in Taxpayer's accounting software. The Department assessed taxpayer penalty and interest for these periods. Taxpayer protests the assessment of penalty and requests abatement because it claims it acted with due diligence and was not willfully neglectful of its proper filing obligations. A phone hearing was held and this Letter of Findings ensues. Additional facts will be provided as necessary.

**I. Tax Administration - Negligence Penalty.****DISCUSSION**

Penalty waiver 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:

(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.

Indiana law requires Taxpayer to demonstrate that it had reasonable cause for not remitting the tax due. In order to establish reasonable cause, Taxpayer must demonstrate that it exercised "ordinary business care and prudence" in conducting the duties from which the additional tax and penalty arose. [45 IAC 15-11-2\(c\)](#).

Taxpayer argued that it was not willfully neglectful of its filing duties. Taxpayer stated that the tax software program it used for the year ending March 31, 2013, did not correctly adjust the net operating loss available for that year and its tax review process did not detect the issue. For the subsequent tax periods ending March 31, 2014, and March 31, 2015, the tax software incorrectly carried forward the net operating loss carryforward. Taxpayer's accountants discovered the software error when they were filing another Indiana taxpayer's returns and acted promptly to uncover any additional filing errors such as Taxpayer's. Taxpayer promptly filed amended returns and paid additional tax due. Taxpayer emphasizes that it has a longstanding good filing history with Indiana and requests that the penalty be abated because it had reasonable cause for its filing errors and the prompt correction demonstrates they were not willfully neglectful.

The Department finds that Taxpayer has met its burden to demonstrate that it had reasonable cause for its filing error. The Department is willing to abate the penalty in this instance.

### **FINDING**

Taxpayer's protest is sustained.

*Posted: 05/31/2017 by Legislative Services Agency*

An [html](#) version of this document.