

Supplemental Letter of Findings Number: 03-20170110
Tax Administration: Penalty
For Tax Years 2013-2015

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

HOLDING

Company established that its failure to properly withhold county income tax for some of its employees was due to reasonable cause and not negligence.

ISSUE

I. Tax Administration–Penalty and Interest.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; IC § 6-3-4-8; *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); [45 IAC 15-11-2](#); [45 IAC 3.1-1-97](#).

Taxpayer protests the imposition of penalty and interest.

STATEMENT OF FACTS

Taxpayer was audited by the Indiana Department of Revenue ("Department"), and as a result of that audit Taxpayer received proposed assessments for withholding tax, penalty, and interest. Taxpayer filed a protest regarding the penalties and interest that were assessed. An administrative telephone hearing was scheduled on the protest at which Taxpayer failed to call or appear. As a result of Taxpayer's failure to participate in the originally scheduled hearing date, the Department's Legal Division mailed to Taxpayer a default letter. After receiving that default letter, Taxpayer contacted the Department and explained why it failed to participate in the hearing and also requested a rehearing. A rehearing was held on the matter and this Supplemental Letter of Findings results. Further facts will be supplied as required.

I. Tax Administration–Penalty and Interest.

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 Department notes that 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 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.

In the case at hand, the audit report states that "taxpayer's payroll records revealed no material errors with regard to State income tax withholding." The auditor, citing to IC § 6-3-4-8 and [45 IAC 3.1-1-97](#), however found county tax errors. The audit report states:

[A]n employer with employees living or working in an Indiana county that has adopted a county income tax is required to withhold the county income tax. For the most part, the taxpayer has properly withheld county income taxes for the majority of its employees. However, this audit has found several employees, living in or working in an Indiana county, but county income taxes were not properly withheld.

The auditor found Taxpayer's county income tax withholding errors were the following: (1) Taxpayer "withheld the county income tax based on the employee's principal place of employment as opposed to withholding county income tax based on the employee's county of residence[;]" (2) Taxpayer "only subjected a portion of the employee's total wages to the county income tax when total wages should have been subjected to the county income tax[;]" and (3) "[f]or several employees, no county [i]ncome tax was withheld whatsoever for the employee."

At the hearing Taxpayer stated that it uses a payroll company for its withholding taxes. In its protest letter, Taxpayer states that it "has been filing withholding tax in a timely manner and paying accordingly" and that "[t]ax was collected, just for the incorrect county in many cases." Prospectively, Taxpayer states that as a result of the audit Taxpayer has "correct[ed] those individuals found to be in error in the audit and to ensuring the HR and payroll departments understand that anytime an individual moves, a change to the county tax being withheld has to be reviewed."

Taxpayer has established that its failure to properly withhold county income tax for some of its employees was due to reasonable cause and not negligence. As the audit report notes, "For the most part, the taxpayer has properly withheld county income taxes for the majority of its employees." Taxpayer has established that it "exercised ordinary business care and prudence" pursuant to [45 IAC 15-11-2\(c\)](#). Taxpayer's protest of the penalty is sustained. Regarding Taxpayer's protest of the interest, pursuant to IC § 6-8.1-10-1(e) interest cannot be waived.

FINDING

Taxpayer's protest regarding the penalty is sustained; Taxpayer's protest of the interest is denied.

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