

**Letter of Findings: 01-20181281
Use Tax
For Tax Year 2016**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual established that he did not owe the ten percent negligence penalty. Therefore, the Department will abate the penalty. The Department however does not have the authority to abate interest.

ISSUE

I. Tax Administration - Penalty and Interest.

Authority: IC § 6-8.1-10-2.1; IC § 6-8.1-5-1; IC § 6-8.1-10-1; *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); [45 IAC 15-11-2](#).

Taxpayer protests the Department's assessment of penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual who timely filed his 2016 Indiana IT-40, which resulted in a refund. On June 8, 2017 Taxpayer submitted a payment of \$748, which created an overpayment in Taxpayer's account with the Indiana Department of Revenue ("Department"). The Department issued Taxpayer a refund of \$748 on August 8, 2017. On the same day Taxpayer submitted an amended 2016 Indiana IT-40X, resulting in tax due of \$748. The Department then billed Taxpayer \$748 plus penalty and interest.

Taxpayer protested the assessment of penalty and interest. An administrative hearing was held, and this Letter of Findings results. Further facts will be supplied as needed.

I. Tax Administration - Penalty and Interest.

DISCUSSION

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting his challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Taxpayer protests the Department's assessment of penalty and interest. Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a negligence 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 when "the taxpayer affirmatively establishes that the failure . . . was due to reasonable cause and not due to negligence." [45 IAC 15-11-2](#)(c). 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." *Id.* The Department is mindful that "[r]easonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case." *Id.*

In this instance, Taxpayer hired a preparer to submit his 2016 Indiana return. However, the preparer submitted the original return, but did not properly fill out the return. Taxpayer had preparer file an amended return and he separately submitted the \$748 on June 23, 2017. However, the preparer did not file the amended return until August 6, 2017. Therefore, Taxpayer did not know that the return was not filed until the Department issued a proposed assessment for the tax due plus penalty and interest. Taxpayer reasonably relied on his preparer to file the return properly and timely. Taxpayer was not negligent in his reliance. Thus, Taxpayer showed that he was not negligent and had reasonable cause for the assessment. Thus, Taxpayer met his burden under IC § 6-8.1-5-1(c) and Taxpayer's protest of negligence penalty is sustained.

Also, Taxpayer asserts that he does not owe interest. Indiana imposes interest on overdue tax pursuant to IC § 6-8.1-10-1(a), which states:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

In the case of the interest assessed, the Department has no discretion to abate or adjust the amount of interest owed. IC § 6-8.1-10-1(e). Taxpayer's request to abate interest is denied.

FINDING

Taxpayer's protest of the penalty is sustained and his protest of interest is denied.

July 10, 2018

Posted: 09/26/2018 by Legislative Services Agency
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