

**Letter of Findings: 02-20182060**  
**Corporate Income Tax**  
**For the 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department agreed that Out-of-State Retailer was entitled to abatement of a ten percent underpayment penalty because Out-of-State Retailer's failure to pay the required amount of estimated corporate income tax did not rise to the level of "willful neglect."

### ISSUE

#### **I. Indiana Corporate Income Tax - Underpayment Penalty.**

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

Taxpayer argues that it is entitled to abatement of an underpayment penalty because its failure to initially pay the correct amount of estimated tax did not constitute willful neglect.

### STATEMENT OF FACTS

Taxpayer is an online retailer of general merchandise and other similar goods. Taxpayer operates multiple business locations including locations found within Indiana. Taxpayer files Indiana corporate income tax returns. Taxpayer filed a 2016 IT-20 ("Indiana Corporate Adjusted Gross Income Tax Return") reporting Indiana source income. The Indiana Department of Revenue ("Department") reviewed the return and forwarded Taxpayer a "Line-by-Line Change or Changes" form. The form indicated that the Department had made various adjustments to the original return in order to "agree with our records."

Among the adjustments, was an assessment of an "underpayment penalty" of approximately \$300,000. Taxpayer agreed with the Department's adjustments but disagreed with the penalty assessment. Taxpayer submitted a protest to that effect, an administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest, and this Letter of Findings results.

#### **I. Indiana Corporate Income Tax - Underpayment Penalty.**

### DISCUSSION

Taxpayer objects to the imposition of the ten percent "underpayment penalty." The issue in this Letter of Findings is whether Taxpayer has provided sufficient information to establish that the Department is justified in abating the penalty.

IC § 6-3-4-4.1(b) imposes on each taxpayer the responsibility to make and pay a "declaration of estimated tax for the taxable years" if the amount of that estimated is more than \$1,000. *Id.*

(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. IC § 6-3-4-4.1(c).

IC § 6-3-4-4.1(d) imposes a penalty if a taxpayer fails to pay the correct amount of estimated tax.

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. *Id.*

IC § 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. IC § 6-8.1-10-2.1(a)(2) requires a ten-percent penalty if the taxpayer "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."

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . 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."

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." *Id.*

Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that 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 IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment - including the negligence penalty - is presumptively valid.

Taxpayer explains that its initial failure to make the requisite amount of estimated quarterly payments was unintentional and does not rise to the level of "willful neglect." Taxpayer states that "with the exception of a first quarter oversight, [Taxpayer] calculated it had made sufficient quarterly estimated payments based on its estimated liability for the year." Taxpayer explains that it had undergone a "complex and major corporate restructuring" that involved reorganizing and integrating approximately 12 separate corporate entities and, in the midst of that restructuring, failed to account properly for various unanticipated "royalty expense addback[s]." In addition, Taxpayer states that it failed to take into consideration assorted EDGE ("Economic Development for a Growing Economy") credits.

The Department acknowledges that Taxpayer is a substantial, sophisticated company fully capable and responsible for reporting and paying the proper amount of Indiana estimated tax. Based on a "case-by-case" analysis and after reviewing "the facts and circumstances of [this] taxpayer" the Department finds that the ten-percent negligence penalty should be abated. Taxpayer "exercised ordinary business care and prudence" and Taxpayer's failure to pay the full amount required was attributable to "reasonable cause and not . . . willful neglect." [45 IAC 15-11-2\(c\)](#); IC § 6-8.1-10-2.1(d).

## FINDING

Taxpayer's protest is sustained.

November 27, 2018

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