

Letter of Findings: 02-20190972P
Tax Administration
For the Years 2011, 2013, 2014, 2015, 2016, and 2017

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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.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

Organization acted reasonably, therefore the penalties will be waived. However, the Department is unable to waive interest.

ISSUES

I. Tax Administration- Penalty.

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

Taxpayer protests the imposition of the late filing penalties.

II. Tax Administration- Interest.

Authority: IC § 6-8.1-10-1.

Taxpayer protests the interest assessed.

STATEMENT OF FACTS

Taxpayer is a nonprofit organization. Taxpayer historically maintained tax exempt status under Section 501(c)(5) of the Internal Revenue Code. However, Taxpayer had that status revoked in 2011 for failing to file Form 990s for three years. Taxpayer then failed to file the required income tax returns until 2019. The Indiana Department of Revenue ("Department") assessed penalties for failure to timely file the required returns. Taxpayer protests the assessment of late filing penalties and interest and this Letter of Finding results. Further facts will be supplied as required.

I. Tax Administration- Penalty.

DISCUSSION

The Department assessed late filing penalties for tax years 2011, 2014, 2015, 2016, and 2017. In 2013, Taxpayer was assessed additional income tax and penalties. Taxpayer paid the tax assessment immediately but did not pay the penalties. Taxpayer protests the imposition of the penalties for all tax years.

A taxpayer who "fails to file a return" or "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 . . . is subject to a penalty." IC § 6-8.1-10-2.1(a). Where there is a tax liability, the penalty is ten percent of outstanding tax, whether that is the full amount of tax or a delinquent portion. IC § 6-8.1-10-2.1(b). Where there is gross income but no tax liability and a taxpayer fails to file a required return, the penalty is "ten dollars (\$10) for each day that the return is past due, up to a maximum of two hundred fifty dollars (\$250)." IC § 6-8.1-10-2.1(g).

The Department shall waive the penalties described above if the taxpayer demonstrates that the failure to file a required return or pay tax due on or before its due date "was due to reasonable cause and not due to willful neglect." IC § 6-8.1-10-2.1(d); *see also* [45 IAC](#) § 15-11-2. A taxpayer's "carelessness, thoughtlessness, disregard or inattention to duties placed upon [it] by the Indiana Code or department regulations" are negligence and not reasonable cause. The taxpayer may demonstrate reasonable cause by showing affirmatively that it used

"ordinary business care and prudence" in failing to file a required return or pay tax by the due date. Whether a taxpayer demonstrates reasonable cause for penalty purposes is a fact-sensitive question and determined on a case-by-case basis. [45 IAC § 15-11-2\(b\)](#) and (c).

In this case, Taxpayer had been recognized previously as a tax-exempt entity under the Internal Revenue Code. Due to mismanagement, the President of Taxpayer resigned and the Board of Directors conducted an internal audit. During this audit, the Board discovered the lack of tax-exempt status and moved to rectify the mistake by filing the required income tax returns and paying the tax due. In addition, Taxpayer implemented protective policies to ensure future compliance with their tax obligations.

Before the Department's involvement, Taxpayer discovered its filing mistake and corrected them. Taxpayer filed the missing 2011, 2013, 2014, 2015, 2016, and 2017 income tax returns and paid the tax owed. Only after Taxpayer notified the Department of its mistake by filing the required returns did the Department assess late-filing penalties. Although Taxpayer initially failed to file its returns, Taxpayer acted with ordinary business care and prudence in rectifying these mistakes and correctly completed their tax obligations before the Department took action against them. Therefore, Taxpayer's protest is sustained. Moving forward, Taxpayer is advised that a penalty may not be waived in the event such a scenario is again presented to the Department.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration- Interest.

DISCUSSION

In 2013, Taxpayer was assessed income tax and interest. Taxpayer promptly paid the assessed income tax, but now protests the assessed interest. Taxpayers who fail to file a return, to pay taxes, or who "incur[] a deficiency upon a determination by the department," are subject to interest on the nonpayment. IC § 6-8.1-10-1(a). Interest continues to accrue until final payment is made. IC § 6-8.1-10-1(e) does not allow the waiver of interest by statute.

Taxpayer has not provided documentation in support of its protest of the imposition of interest, but more importantly, the Department is not authorized to waive interest under IC § 6-8.1-10-1(e). Therefore, Taxpayer was properly assessed interest and their protest is denied.

FINDING

Taxpayer's protest is respectfully denied.

SUMMARY

Taxpayer is sustained on Issue I and denied on Issue II.

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