

**Letter of Findings Number: 02-20190977P**  
**Income Tax**  
**For Tax Year 2018**

**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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register. The "Holding" section is provided for the convenience of the reader and is not part of the analysis contained in this document.

**HOLDING**

Company provided sufficient documentation to warrant negligence penalty abatement. The Department cannot waive interest.

**ISSUE**

**I. Tax Administration - Negligence Penalty and Interest.**

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

Taxpayer protests the imposition of negligence penalty and interest.

**STATEMENT OF FACTS**

Taxpayer is an Indiana corporation. The Indiana Department of Revenue ("Department") audited Taxpayer and determined that Taxpayer had failed to remit nonresident withholding tax for the year 2018. The Department issued a proposed assessment for base tax, a ten percent negligence penalty, and interest. Taxpayer protested the imposition of the penalty and interest. Taxpayer waived its right to hearing, and this Letter of Findings results. Additional facts will be supplied as needed.

**I. Tax Administration - Negligence Penalty and Interest.**

**DISCUSSION**

The Department issued proposed assessment for base tax, a ten percent negligence penalty, and interest for the tax year 2018. Taxpayer protested the imposition of the penalty and interest. Taxpayer states that it made estimated payments of withholding tax during the year that were sufficient to cover the ultimate tax liability of its non-resident partner.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). The issue before the Department is whether Taxpayer met its burden to prove the Department's assessment is incorrect.

A taxpayer who "incurs a deficiency upon a determination by the department . . . is subject to interest on the nonpayment." IC § 6-8.1-10-1(a). Except in specific circumstances, the Department may not waive interest. IC § 6-8.1-10-1(e).

A taxpayer who "incurs, upon examination by the department, a deficiency that is due to negligence . . . is subject to a penalty." IC § 6-8.1-10-2.1(a). The Department shall waive the penalty if the taxpayer demonstrates that the failure to pay the deficiency determined by the Department "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](#). The taxpayer may demonstrate reasonable cause by showing affirmatively that it used "ordinary business care and prudence" in not paying the outstanding taxes. 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).

Pursuant to IC § 6-8.1-10-1(e), Taxpayer's protest of the imposition of interest in this case is denied. However, Taxpayer has demonstrated reasonable cause in its failure to pay the deficiency determined by the Department. Also, a review of Department records shows a good compliance history regarding withholding tax for Taxpayer. Taxpayer's protest of the imposition of the penalty is sustained. The Department takes this opportunity to notify Taxpayer that it is now aware of its tax obligations and that a negligence penalty may be imposed if this scenario occurs again.

### **FINDING**

Taxpayer's protest of the imposition of interest is respectfully denied, but Taxpayer's protest of the imposition of the negligence penalties is sustained.

December 9, 2019

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