

Letter of Findings: 02-20191057P
Corporate Income Tax
For The 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Business acted reasonably, therefore the penalties will be waived.

ISSUE

I. Tax Administration - Penalty for underpayment of tax.

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

Taxpayer protests the imposition of a negligence penalty.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer, finding additional corporate income tax liability, and issued proposed assessments which included a penalty assessment for the underpayment of tax. Taxpayer did not protest the tax liability, but protests the assessment of penalty for underpayment of tax. An administrative hearing was held and this Letter of Finding results. Further facts will be supplied as required.

DISCUSSION

The Department assessed an underpayment penalty for the 2016 tax year, which Taxpayer now protests. The Department will determine whether the penalties imposed shall be waived.

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 a corporation fails to withhold and pay tax required to be withheld and paid, the penalty is twenty percent of the tax required to be withheld. [IC 6-8.1-10-2.1\(h\)](#).

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, [or] 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 paid its originally estimated tax liability on time. These estimates were made based on multiple transfer pricing studies completed by third-party firms, which were the basis of Taxpayer's originally filed returns. During the audit, the Department made adjustments to these transfer pricing studies, which make up the tax liability used to calculate the penalty assessment. The Department made adjustments to these studies, meaning that the studies were flawed, but these flaws were not so fundamental as to deem Taxpayer's reliance on them as negligent. Taxpayer may have been better served by completing a more thorough review of the transfer pricing studies, but its actions do not rise to the level of carelessness, thoughtlessness, or disregard of duties. Thus, Taxpayer's protest is sustained in this case. 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.

December 6, 2019

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