

Letter of Findings: 01-20200240
Individual Indiana Income Tax Penalty
For the 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 with Estate Representative that he met his burden of establishing that the late penalty, assessed on the submission of the decedent's 2018 individual income tax return, should be abated.

ISSUE

I. Indiana Individual Income Tax - Late Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Estate Representative asks that the Department abate a ten-percent "late penalty" on the ground that he acted reasonably and with good cause in submitting the decedent's 2018 return when and as he did.

STATEMENT OF FACTS

Estate Representative, acting on behalf of decedent Taxpayer, prepared and submitted decedent Taxpayer's 2018 Indiana income tax return. Presumably, the 2018 return was due April 15, 2019. However, the return was untimely submitted to the Indiana Department of Revenue ("Department") March 2020.

The Department issued a notice of proposed assessment which included tax, penalty, and interest. Estate Representative arranged for payment of the proposed assessment but also submitted a protest asking that the ten-percent "late penalty" be abated and that the penalty amount be refunded to the estate.

In response, the Department assigned the matter to the Hearing Officer. Upon review of the documents and explanation provided by the Estate Representative, this Letter of Findings results.

I. Indiana Individual Income Tax - Late Penalty.

DISCUSSION

The issue is whether Estate Representative has met his burden of establishing that - given the circumstances - the Department should exercise its authority to abate the ten-percent late penalty assessed decedent Taxpayer.

Estate Representative explains that Taxpayer was diagnosed with a serious illness in 2016, and that the subsequent medical treatment left Taxpayer unable to submit the 2018 return and pay the assessment. Following Taxpayer's passing, Estate Representative further explains there was a lengthy "process of obtaining the legal authority to represent [Taxpayer]" which "continued to delay the filing."

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.

Estate Representative has fully met his statutory burden of establishing that he acted with "ordinary business care" in filing the 2018 return as he did and there was "reasonable cause" for the delay in filing that return.

FINDING

Estate Representative's protest is sustained and the Department is directed to issue a refund of the penalty.

June 10, 2020

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