

**Letter of Findings Number: 01-20200220P
Individual Income Tax
For the Year 2017**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

HOLDING

Couple failed to provide sufficient reasoning to support their position that the Department should abate their penalty for filing late.

ISSUES

I. Abatement - Penalty.

Authority: IC § 6-8.1-10-2.1; IC § 6-8.1-5-1; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [45 IAC 15-11-2](#).

Taxpayers protest the Department's imposition of penalty and interest.

STATEMENT OF FACTS

Taxpayers are Indiana residents. Taxpayers amended their Indiana return as required because they amended their Federal return. The Department issued a penalty for the late amendment of the Indiana return. Taxpayers protest the penalty issued by the Department. Taxpayers requested a hearing, and the Department scheduled the hearing. Taxpayers then elected to forgo a hearing, and this Letter of Findings results. Additional facts will be provided as necessary.

I. Abatement - Penalty.

DISCUSSION

Taxpayers protest the imposition of penalty. Taxpayers admit that they filed their 2017 Indiana IT-40X return late. They claim that they had to adjust their 2017 federal income tax return because of complex tax issues related to an investment. Taxpayers argue that their errors were not made with intent or willful neglect. Taxpayers filed their original 2017 IT-40 Indiana return electronically on June 28, 2018. They remitted their 2017 Indiana IT-40X on December 23, 2019. Taxpayers filed their Federal IT-40 on June 26, 2018. However, Taxpayers failed to provide documentation showing the date that they filed their amended Federal IT-40X. Taxpayers ask the Department to exercise its authority under IC § 6-8.1-10-2.1(d).

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

IC § 6-8.1-10-2.1 in relevant part provides:

- (a) Except as provided in [IC 6-3-4-12\(k\)](#) and [IC 6-3-4-13\(l\)](#), a person that:

- (1) fails to file a return for any of the listed taxes;
 - (2) *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;*
 - (3) incurs, upon examination by the department, a deficiency that is due to negligence;
 - (4) fails to timely remit any tax held in trust for the state; or
 - (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department;
- is subject to a penalty.*
- (b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10[percent]) of:
- (1) the full amount of the tax due if the person failed to file the return;
 - (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
 - (3) the amount of the tax held in trust that is not timely remitted;
 - (4) the amount of deficiency as finally determined by the department; or
 - (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.
- (c) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.
- (d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, 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.*
- (e) A person who wishes to avoid the penalty imposed under this section must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.
- (f) The department shall adopt rules under [IC 4-22-2](#) to prescribe the circumstances that constitute reasonable cause and negligence for purposes of this section.
- (g) A person who fails to file a return for a listed tax that shows no tax liability for a taxable year, other than an information return (as defined in section 6 of this chapter), on or before the due date of the return shall pay a penalty of ten dollars (\$10) for each day that the return is past due, up to a maximum of two hundred fifty dollars (\$250).
- (Emphasis added).*

[45 IAC 15-11-2](#)(c) provides guidance regarding how to interpret reasonable cause:

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 this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Under IC § 6-8.1-5-1(c), Taxpayers have the burden of proving that the proposed assessment is wrong. Taxpayers' argument rests on the fact that it was a complex tax issue that required them to amend their Federal return and that their history and timely payment of additional tax due is evidence of their desire to be compliant. In addition, Taxpayers claim that the error was not intentional or willful. This reasoning is not sufficient to show that the error was due to reasonable cause as required under IC § 6-8.1-10-2.1 and guided by [45 IAC 15-11-2](#)(c). Taxpayers failed to explain why they were able to timely correct the complex tax issue at the Federal level but were unable to timely report the same issue with the Department.

Therefore, the Department will not waive penalty.

FINDING

Taxpayers' protest is denied.

December 1, 2020

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