

LETTER OF FINDINGS: 02-20210073
Corporate Income Tax
For Tax Periods ending March 2016 to December 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Supplemental Letter of Findings.

HOLDING

Restaurant operator provided sufficient evidence to have its penalty abated.

ISSUE

I. Tax Administration—Penalties.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-4; IC § 6-8.1-10-2.1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *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); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of penalties.

STATEMENT OF FACTS

Taxpayer is a restaurant operator with retail businesses in Indiana. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had underreported corporate income tax for the tax periods March 2016 through December 2018. The Department issued proposed assessments for corporate income tax, penalties, and interest for those years. Taxpayer protested the assessed penalties, stating that it hired an accountant to file taxes and this individual misled the company into believing the tax returns were completed correctly. Taxpayer waived its right to an administrative hearing. This decision therefore relies on evidence submitted alongside Taxpayer's protest. Further facts will be provided as necessary.

II. Tax Administration—Penalties.

DISCUSSION

Taxpayer protests the imposition of penalties associated with its corporate income tax audit. The Department notes that penalty waiver is permitted if the taxpayer shows that the failure to timely pay the full amount of the tax was due to reasonable cause and not due to willful neglect.

As a threshold issue, it is the 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 [D]epartment's claim for the unpaid tax is valid . . . [t]he 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)(internal quotes omitted). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

Taxpayer protests the imposition of penalties pursuant to IC § 6-8.1-10-2.1. Penalty waiver is permitted if a taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. [45 IAC 15-11-2\(b\)](#) clarifies the standard for the imposition of the negligence penalty as follows:

"Negligence", on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2\(c\)](#) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. 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.

Taxpayer protests the Department's assessment of penalties, stating that its previous accountant was a CPA hired in good faith to prepare its tax returns. During the audit process, Taxpayer fired this CPA and hired a new CPA to make corrections to the previous returns and to file taxes correctly going forward. Taxpayer has also established via documentation that it has taken legal action against its former CPA. After review of the documentation and analysis provided in the protest process, the Department agrees that waiver of penalties is warranted. Taxpayer provided sufficient explanation of the cause of the underpayments and has taken steps to rectify those errors. Waiver of penalties is warranted under [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest to the imposition of penalties is sustained.

February 10, 2023

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