

DEPARTMENT OF STATE REVENUE

02-20231028.LOF

**LETTER OF FINDINGS: 02-20231028
Indiana Corporate Income Tax Penalty
For the Year 2021**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Indiana Distribution Company erred in determining the due date of its corporate income tax payment, and the Department correctly imposed a late penalty. However, the Department agreed that Distribution Company acted as an "ordinary reasonable taxpayer" to an extent which justified abatement of that penalty.

ISSUE**I. Corporate Income Tax Administration - Penalty.**

Authority: IC § 6-3-4-3; IC § 6-3-4-5; IC § 6-8.1-5-1; IC § 6-8.1-6-1; IC § 6-8.1-10-2.1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *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 argues that it timely filed its 2021 Indiana corporate income tax return and that the Department's assessment of a "late" penalty was wrong.

STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of selling and distributing petroleum products. Taxpayer routinely files Indiana corporate income tax returns.

Taxpayer submitted its 2021 corporate income tax payment. According to the Department's records, the payment was received on May 17, 2022. The Indiana Department of Revenue ("Department") reviewed the return and, upon review, determined that the payment was untimely. As a result, the Department assessed a proposed late penalty.

Taxpayer contacted the Department questioning the penalty assessment. In a letter dated December 29, 2022, the Department declined to adjust or abate the penalty explaining as follows:

After reviewing your correspondence, DOR determined your reason for late filing and/or payment unacceptable. Please note that your penalty is not waived for the following periods: December 31, 2021.

Taxpayer continued to disagree with the penalty assessment and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representatives explained the basis for the protest. This Letter of Findings results.

I. Corporate Income Tax Administration - Penalty.**DISCUSSION**

Taxpayer argues that the payment was timely made on May 17, 2022; the Department concluded that the payment was late because the payment was due May 16, 2022.

The issue is whether Taxpayer has met its burden of establishing that it timely paid its 2021 Indiana corporate income tax liability and, as a result, the Department's late penalty assessment was wrong.

As with any assessment, it is Taxpayer's responsibility to establish that the tax penalty 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 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). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong.

In assessing the Department's position, the relevant Indiana law, and Taxpayer's argument, the Department bears in mind that "when [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, interpretations of Indiana tax law contained within this decision, as well as the original audit, are entitled to deference.

Taxpayer relies on IC § 6-8.1-6-1 as authority for its position that the return was timely filed on May 17, 2022. Taxpayer explains:

The code states that, in 2022, payment is due 30 days after the federal deadline. I believe that the Indiana General Assembly code is being revised for dates after 1/1/23, but we are not there yet. Since the federal due date was April 18, could you please tell me why the Indiana due date was May the 16th this year despite the passage in the Indiana General Assembly code?

Specifically, Taxpayer cites to IC § 6-8.1-6-1(c)(1) which states:

The following apply only to a person's Indiana adjusted gross income tax return or a person's financial institutions tax return:

- (1) If the Internal Revenue Service allows a person an extension on the person's federal income tax return, the corresponding due dates for the person's Indiana income tax returns are automatically extended for the same period as the federal extension, plus thirty (30) days.

Taxpayer concludes "As the Federal due date for 2021 was April 18th, 2022, that would make the due date for payment May 18th, 2022. The IC § 6-8.1-6-1 revision effective after 1/1/23 specifically removes this weekend/holiday adjustment, therefore it must be valid."

The Department's short explanation, contained in the return's instruction booklet, is that a "General or Regular Corporation's" payment is due on the "15th day of the 5th month following close of the taxable year."

IC § 6-3-4-3 provides:

Returns required to be made pursuant to section 1 of this chapter shall be filed with the department on or before the later of the following:

- (1) The 15th day of the fourth month following the close of the taxable year.
- (2) For a corporation whose federal tax return is due on or after the date set forth in subdivision (1), as determined without regard to any extensions, weekends, or holidays, the 15th day of the month following the due date of the federal tax return.

However, if the due date for a federal income tax return is extended by the Internal Revenue Service to a date that is later than the date specified in subdivision (1) or (2) (as applicable), the department may extend the due date of a return required to be made under section 1 of this chapter to the due date permitted for the federal income tax return.

IC § 6-3-4-5 requires that companies who file returns and owe tax, are required to pay the tax due on the same day the returns are due.

When a return of tax is required pursuant to sections 1 and 3 of this chapter, the taxpayer required to make such return shall, without assessment or notice and demand from the department, pay such tax to the department at the time fixed for filing the return without regard to any extension of time for filing the return. In making a return and paying tax for any taxable year, a taxpayer shall take credit for any tax previously paid by him for such taxable year.

In Taxpayer's case, it mistakenly relied on a provision in Indiana law (IC § 6-8.1-6-1(c)(1)) governing federal

extensions. IC § 6-3-4-3 provides that the return and payment are due on "the 15th day of the month following the due date of the federal return." A quick review of a 2022 calendar indicates that the 15th day of the month fell on a Sunday automatically pushing the due date to the 16th.

On the sole issue of "timeliness," Taxpayer was wrong in its analysis and the Department was correct.

However, Taxpayer explains that its return was filed based on specific, written instructions received by means of its UltraTax software supplied by Thompson Reuters. According to Taxpayer, the software specified that the payment due date was May 18, 2022, and that this Thompson Reuters information was "approved by the State of Indiana before wide use."

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, while 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 wave 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"

As pointed out above, IC § 6-8.1-5-1(c), Taxpayer has "[t]he burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment - including the late penalty - is presumptively valid.

There is no indication that the Department vetted the filing and payment information provided Taxpayer by Thomson Reuters. However, there is no evidence that Taxpayer's filing error was directly attributable to "willful neglect." Considering the circumstances on a "case-by-case" - including the length of time the payment was late - the Department agrees that the penalty should be abated.

FINDING

Taxpayer's protest challenging the imposition the late penalty on the grounds raised is denied. However, the Department agrees that Taxpayer acted as an "ordinary reasonable taxpayer" which calls for abatement of that penalty.

February 15, 2023

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