

Letter of Findings: 04-20221100, 04-20221101
Sales Tax and Corporate Tax
For The Years 2015 and 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 agrees to waive the penalties imposed because Business relied on professional advice.

ISSUE

I. Tax Administration - Penalty.

Authority: [IC 6-8.1-5-1](#); [IC 6-8.1-10-1](#); [IC 6-8.1-10-2.1](#); *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](#).

Taxpayer protests the Department's assessment of penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state business that offers general contracting services as a service provider. Taxpayer was initially audited for tax years 2017-2019. The Indiana Department of Revenue ("Department") initiated a second audit related to tax years 2015 and 2016 because Taxpayer failed to file tax returns in 2015 and 2016. Taxpayer's failure to file was based on the advice of a CPA employed by Taxpayer. After hiring a new CPA firm, Taxpayer correctly began filing Indiana returns for both sales tax and corporate income tax.

As a result of the audit, Taxpayer was assessed additional sales tax for tax years 2015 and 2016 as well as applicable penalties and interest. Taxpayer was also assessed additional corporate income tax for tax years 2015 and 2016 and assessed penalties for failing to file an Indiana return and failing to include a non-resident partner on the composite return. Taxpayer does not dispute the sales tax or corporate income tax amounts assessed for either tax year, but rather, solely protests the assessment of penalties for both tax years.

Taxpayer requested resolution without a hearing. The Department spoke with Taxpayer's representative to gain a better understanding of the sequence of events. This Letter of Findings results. Additional facts will be provided as necessary.

I. Tax Administration - Penalty.

DISCUSSION

The Department determined Taxpayer owed additional sales tax and corporate income tax after an audit. As a result, the Department assessed additional sales tax, corporate income tax, penalty, and interest for tax years 2015 and 2016.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. A proposed assessment is prima facie evidence the Department's claim for the unpaid tax is valid. [IC 6-8.1-5-1\(c\)](#). The burden of proving the proposed assessment is wrong rests with the person against whom the proposed assessment is made. *Id.*; See e.g. *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). 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).

An assessment is considered a tax payment which, if not made by the due date, accrues penalty and interest. [IC 6-8.1-5-1](#)(b). Interest accrues via a statutorily described rate, and the Department may not waive interest imposed. [IC 6-8.1-10-1](#)(c) and (e). In addition to interest, the Department may also impose various penalties. If a corporation fails to withhold the required amount of taxes, the Department may impose a twenty percent penalty. [IC 6-8.1-10-2.1](#)(h). If an S Corporation fails to include nonresident partners in a composite return, the corporation is subject to a penalty of \$500. [IC 6-8.1-10-2.1](#)(j). However, if a taxpayer can show the failure to file a return was due to reasonable cause and not due to willful neglect, the penalty can be waived by the Department. [IC 6-8.1-10-2.1](#)(d).

Reasonable cause is defined by [45 IAC 15-11-2](#)(b) as:

"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.

Taxpayer's representative explained that Taxpayer is an out-of-state company headquartered in a state bordering Indiana. Taxpayer conducts business inside and outside of Indiana and has done so for years. Taxpayer employed a CPA who incorrectly informed Taxpayer that, despite conducting business in Indiana, Taxpayer was not required to file tax returns in Indiana. Taxpayer relied on this advice for several years.

Approximately five years ago, Taxpayer hired a new CPA firm. The new CPA firm immediately and correctly informed Taxpayer that, because it was doing business in Indiana, it needed to file Indiana tax returns. Taxpayer began filing as required in Indiana. Taxpayer was then audited, and the Department assessed additional taxes due and imposed associated penalties. Taxpayer's representative indicated that Taxpayer has no issue with the additional assessed tax, and in fact, has already paid those amounts. The only issue under protest is the imposed penalties.

Because Taxpayer relied on professional advice and has since proactively filed timely returns and paid all base tax amounts due for sales tax and corporate income tax, the Department will waive the assessed penalties. Since Taxpayer has already remitted payment for the assessed penalties for tax years 2015 and 2016, the Department will issue a refund of the penalties paid for those tax years.

FINDING

Taxpayer's protest is sustained.

December 2, 2022

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