

Letter of Findings: 01-20221727
Individual Indiana Income Tax
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department agreed with Individual's argument that the since abated individual income tax "late payment" penalty was erroneous, Individual owed no amount of additional individual income tax, Individual owed no interest charges, and that Individual was entitled to the full amount of the Automatic Tax Refund allowed under Indiana law.

ISSUE

I. Indiana Individual Income Tax - Late Payment Penalty.

Authority: [IC 6-3-1-3.5](#); [IC 6-3-2-1](#); [IC 6-8.1-5-1](#); [IC 6-8.1-10-2.1](#); [IC 6-8.1-10-2.1](#); *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 15-5-1](#); [45 IAC 15-11-2](#).

Taxpayer argues that the Department's assessment of a late/underpayment penalty was erroneous.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who timely filed his 2020 and 2021 Indiana income tax returns. Previously, Taxpayer timely submitted quarterly estimated income tax payments for those periods.

The Indiana Department of Revenue ("Department") refunded the amount of estimated tax indicated on one of the quarterly estimated payments. The refund amount was approximately \$4,200.

Subsequently, the Department issued Taxpayer a proposed penalty assessment on the ground that Taxpayer had underpaid his 2021 income taxes. The amount of the penalty was approximately \$180.

Taxpayer disagreed with the penalty assessment and submitted a protest to that effect. Taxpayer's protest was dated June 2022.

In August 2022, the Department notified Taxpayer that "you are eligible for Automatic Tax Refund(s) of \$650.00. However, your refund has been offset or is being withheld for verification" The August 2022 letter went on to explain that the Department has "reduced the [refund] amount that may be issued to you either in full or in part."

In November 2022 the Department agreed to abate the \$180 penalty explaining "[a]fter reviewing your correspondence, the [Department] determined your filing and/or payment acceptable. Please note that your penalty amount is waived for the following filing periods: December 31, 2021." A letter to that effect was issued November 29, 2022.

Taxpayer maintains that the penalty was unwarranted and that any "underpayment" issue was entirely attributable to the Department's mishandling of Taxpayer's various payments and the Department's decision to refund \$4,200.

I. Indiana Individual Income Tax - Late Payment Penalty.

DISCUSSION

The issue is whether the Department was wrong when it assessed a \$180 late payment penalty.

As with any assessment of Indiana listed taxes, it is Taxpayer's responsibility here to establish that the proposed assessments of tax, interest, and penalty are - or were - incorrect. As stated in [IC 6-8.1-5-1\(c\)](#) and Indiana case law, "The notice of proposed assessment is prima facie evidence that the [D]epartment'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." See also *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).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." [IC 6-3-2-1\(a\)](#). [IC 6-3-1-3.5\(a\)](#) provides the starting point in determining the taxpayer's taxable income and calculate what would be their Indiana income tax after applying any particular additions and subtractions. The statute provides in small part that Indiana AGI starts with "'adjusted gross income' (as defined in Section 62 of the Internal Revenue Code) . . ." *Id.*

The \$180 penalty was assessed pursuant to [IC 6-8.1-10-2.1\(a\)\(2\)](#) which imposes a penalty assessment if a 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."

Indiana law allows for abatement of the penalty under [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.* [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"

In this case and, for purposes of this Letter of Findings, the abatement provisions cited above are irrelevant because the Department previously agreed with Taxpayer that the penalty should be abated.

Taxpayer also argues that he should not have been charged interest because any assessment was attributable to the Department's mishandling of his otherwise timely payments and its erroneous decision to refund a portion of the money paid the state. In this instance and, for purposes of this Letter of Findings, the Department points out that no interest charges are pending. The Department corrected Taxpayer's account, abated the penalty, and found that Taxpayer owed no additional income tax. As a result, the objections pointed out by Taxpayer are moot; in effect, ten percent of nothing is nothing.

In addition, Taxpayer objects to the Department's decision to offset the amount of his Automatic Tax Refund. A review of Taxpayer's account reveals that upon the Department's decision - perhaps belatedly - addressing the tax assessment and late penalty, Taxpayer has received or been credited with the full \$650 to which Taxpayer is entitled.

Whatever the sequence of events which lead to the misapplied payment or the erroneous refund, the Department concludes that everything required of the Department, and everything required of Taxpayer, has been done. The Department agrees entirely that Taxpayer owes no remaining tax, the late penalty should have been abated, no interest amounts are due, and that Taxpayer is entitled to the full \$650 Automatic Tax Refund amount.

FINDING

To the extent provided for in this Letter of Findings, Taxpayer's protest is sustained.

January 17, 2023

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