

**Letter of Findings: 02-20231289**  
**Corporate Income Tax Penalty**  
**For the Years 2017 to 2020**

**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 Indiana Department of Revenue'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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 disagreed with Research Company that it was not required to file a composite nonresident partner return; however, the Department concluded that Research Company's failure did not constitute "willful neglect," thereby warranting abatement of the twenty-percent penalty.

### ISSUE

#### I. Corporate Income Tax - Twenty-Percent Penalty.

**Authority:** [IC 6-3-4-12](#); [IC 6-8.1-5-1](#); [IC 6-8.1-10-2.1](#); [45 IAC 15-11-2](#).

Taxpayer argues that it is entitled an abatement of a twenty-percent penalty assessed by the Department because the penalty was wrong.

### STATEMENT OF FACTS

Taxpayer is an Indiana research company in the business of providing research services to pharmaceutical and biotechnical companies.

Taxpayer is organized as a partnership which elected to file a Form 1065 ("U.S. Return of Partnership Income") federal income tax return and a Form IT-65 ("Indiana Partnership Return"). Taxpayer has one resident partner and one nonresident partner.

The Indiana Department of Revenue ("Department") conducted an audit of Taxpayer Indiana returns. The Department determined that Taxpayer failed to file a composite partner tax return and pay the tax owed by the nonresident.

As a result, the Department assessed \$500 penalties and a twenty-percent failure to file penalty.

Taxpayer disagreed with the twenty-percent penalty and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer explained the basis for its protest. This Letter of Findings result.

#### I. Corporate Income Tax - Twenty-Percent Penalty.

### DISCUSSION

The issue is whether Taxpayer has met its burden of establishing that it is entitled to an abatement of the twenty-percent penalty on the ground that the penalty assessment was wrong. Although initially challenging the \$500 penalties, Taxpayer changed its position. According to Taxpayer's representative, "Our client [now] accepts the \$500 penalty per year . . . ."

The Department assessed the penalty because Taxpayer did not do what it is required to do under [IC 6-3-4-12\(a\)](#). In part, the statute states:

Every partnership shall, at the time that the partnership pays or credits amounts to any of its nonresident partners on account of their distributive shares of partnership income, for a taxable year of the partnership,

deduct and retain therefrom the amount prescribed in the withholding instructions referred to in section 8 of this chapter. Such partnership so paying or crediting any nonresident partner:

- (1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and retained under this section and shall not be liable to such partner for the amount deducted from such payment or credit and paid over in compliance or intended compliance with this section; and
- (2) shall make return of and payment to the department monthly whenever the amount of tax due under [IC 6-3](#) and [IC 6-3.6](#) exceeds an aggregate amount of fifty dollars (\$50) per month with such payment due on the thirtieth day of the following month, unless an earlier date is specified by section 8.1 of this chapter.

Because it did not do what is required, the twenty-percent penalty was imposed under [IC 6-8.1-10-2.1](#)(h) which states:

A:

- (1) corporation which otherwise qualifies under [IC 6-3-2-2.8](#)(2);
- (2) partnership; or
- (3) trust; that fails to withhold and pay any amount of tax required to be withheld under [IC 6-3-4-12](#), [IC 6-3-4-13](#), or [IC 6-3-4-15](#) shall pay a penalty equal to twenty percent (20[percent]) of the amount of tax required to be withheld under [IC 6-3-4-12](#), [IC 6-3-4-13](#), or [IC 6-3-4-15](#). This penalty shall be in addition to any penalty imposed by section 6 of this chapter.

Under [IC 6-8.1-5-1](#)(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment - including the twenty-percent penalty - is presumptively valid.

Taxpayer's representative explains why the penalty should be abated any why the assessment was wrong:

Our client is in disagreement with the 20[percent] penalty because the tax was ultimately paid at the corporate level. The reason the tax was paid at the Corporate level is because [Taxpayer's] activities constitute a unity business relationship with the corporate partner.

In its original protest letter, Taxpayer assured the Department that "[we] have included documentation showing where [T]axpayer included its income under the corporate partner[s] return."

The Department concludes that Taxpayer's argument misses the mark and that the Department's audit did what it was required to do. Indiana law provides that, in the case of a taxpayer's failure to report the tax as required, the taxpayer "*shall* pay a penalty . . ." and that the 20 percent penalty "*shall* be in addition to any [other] penalty . . . ." [IC 6-8.1-10-2.1](#). (*Emphasis added*).

Implicitly, Taxpayer appears to argue that there is sufficient information within the returns as filed for the Department to satisfy itself that the tax was correctly determined, that the tax was paid to the state, and that the tax was correctly credited to the partner.

Taxpayer is a substantial, sophisticated company well represented by people who know and understand Indiana's reporting requirements. Taxpayer has not established that the assessment was "wrong." The Department specifically rejects Taxpayer's argument that the manner in which it reported its tax liability was more than enough for the Department to discern Taxpayer's intentions.

Nonetheless, the Department also recognizes that Indiana law provides the Department a certain latitude even when imposition of the penalty was not "wrong."

[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 . . . ."

In this instance, while continuing to find that Taxpayer's argument was untenable, the Department does agree that Taxpayer's reporting error did not constitute "willful neglect." However, Taxpayer should note that continued failure to file its returns as the law requires clearly crosses the line into "willful neglect."

**FINDING**

Taxpayer's substantive protest is rejected, but the Department agrees that there are sufficient grounds permitting the Department to abate the penalty.

June 6, 2023

*Posted: 08/30/2023 by Legislative Services Agency*  
An [html](#) version of this document.