

Letter of Findings: 02-20231810
Tax Administration
For the Year Ending December 31, 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Partnership demonstrated that the penalty assessment should be abated. Indiana Partnership remained responsible for the statutory interest.

ISSUE

I. Tax Administration - Penalty and Interest.

Authority: [IC 6-3-4-12](#); [IC 6-8.1-5-1](#); [IC 6-8.1-10-1](#); *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); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); [45 IAC 15-11-2](#).

Taxpayer requested that the penalty and interest be abated.

STATEMENT OF FACTS

Taxpayer is an Indiana limited liability partnership. Taxpayer files federal and Indiana income tax returns, Form 1065 and Form IT-65, respectively. Taxpayer's income flows through to its partners, including resident and nonresident partners. For the nonresident partners, Taxpayer files composite nonresident partner returns and withholds tax on the "flow-through" income, as statutorily required.

In January 2023, the Indiana Department of Revenue ("Department") determined that, for 2021, Taxpayer did not timely withhold and remit a sufficient amount of the tax, as statutorily required. The Department assessed Taxpayer penalty and interest accordingly.

Taxpayer requested that the interest and penalty be abated. An administrative hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Tax Administration - Penalty and Interest.

DISCUSSION

The Department assessed penalty because it determined that, for 2021, Taxpayer did not timely withhold and remit a sufficient amount of the tax, as statutorily required. The Department, in a letter, explained the following:

We did not receive your full payment by the original due date. If you received an extension of the due date, we either did not receive at least 80[percent] of the composite tax due by the original due date or the tax that remained unpaid during the extension period was not paid by the extended due date. A late payment penalty has been assessed. . . .

Taxpayer disagreed and requested that the penalty and interest be abated.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. [IC 6-8.1-5-1\(c\)](#); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "[E]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). The

taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010). "[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).

[IC 6-3-4-12](#) provides, in relevant part:

(h) If a partnership fails to withhold and pay any amount of tax required to be withheld under this section and thereafter the tax is paid by the partners, the amounts of tax as paid by the partners shall not be collected from the partnership but it may not be relieved from liability for interest or penalty otherwise due in respect to the failure to withhold under [IC 6-8.1-10](#).

...

(j) If a partnership does not include all nonresident partners in the composite return, the partnership is subject to the penalty imposed under [IC 6-8.1-10-2.1\(j\)](#).

(k) For taxable years beginning after December 31, 2013, the department may not impose a late payment penalty on a partnership for the failure to file a return, pay the full amount of the tax shown on the partnership's return, or pay the deficiency of the withholding taxes due under this section if the partnership pays the department before the fifteenth day of the fourth month after the end of the partnership's taxable year at least:

- (1) eighty percent (80[percent]) of the withholding tax due for the current year; or
- (2) one hundred percent (100[percent]) of the withholding tax due for the preceding year.

...

(m) Notwithstanding subsection (k), a partnership is subject to a late payment penalty for the failure to file a return, pay the full amount of the tax shown on the partnership's return, or pay the deficiency of the withholding taxes due under this section for any amounts of withholding tax, including any interest under [IC 6-8.1-10-1](#), reported or paid after the due date of the return, as adjusted by any extension under [IC 6-8.1-6-1](#).

The Department may waive a penalty as provided in [45 IAC 15-11-2\(c\)](#), which states, in part:

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 asserted that it "filed a Federal Form 7004, formally requesting an extension for the federal tax filing for tax year 2021." Taxpayer also documented that it remitted "a minimum payment [] (80[percent]) of the total composite tax due) [] on or before April 15, 2022." Taxpayer thus maintained that it complied with the statutory requirements under [IC 6-3-4-12\(k\)](#).

Based on the verifiable supporting documents provided, the Department is prepared to agree that the penalty should be abated. Nonetheless, the statutory interest is mandatory when Taxpayer incurred a deficiency upon a determination by the Department. [IC 6-8.1-10-1\(a\)](#). The Department does not have the authority to waive the interest. [IC 6-8.1-10-1\(e\)](#).

FINDING

Taxpayer's protest of penalty is sustained. Taxpayer is responsible for the statutory interest.

August 28, 2023

Finding Replaces: New

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An [html](#) version of this document.