

Letter of Findings: 02-20231639; 02-20231991
Corporate Income Tax Penalties
For the Tax Years 2020 and 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 exercised its authority to abate "underpayment" penalties because Retail Store Chain's failure to pay sufficient estimated taxes was not attributable to a lack of the Retail Store Chain's reasonable care, caution, or diligence.

ISSUE

I. Corporate Income Tax - Underpayment Penalty.

Authority: [IC 6-3-4-4.1](#); [IC 6-8.1-5-1](#); [IC 6-8.1-10-2.1](#); [45 IAC 15-11-2](#).

Taxpayer asks that the Department exercise its discretion to abate two underpayment penalties.

STATEMENT OF FACTS

Taxpayer is a retail chain store operating from locations both within and outside Indiana. Taxpayer routinely reports and pays Indiana corporate income tax.

Taxpayer filed its tax return for the period ending January 31, 2021. On that return, Taxpayer reported its total adjusted gross income. The Indiana Department of Revenue ("Department") reviewed the return and disagreed with Taxpayer's calculation and assumptions. Taxpayer had assumed it was entitled to report and carry forward previous estimated payments to satisfy any potential liability for the period ending January 31, 2021.

Taxpayer subsequently filed its tax return for the period ending January 31, 2022. On that return, Taxpayer reported its total adjusted gross income. The Department reviewed the return and disagreed with Taxpayer's calculation and assumptions. Taxpayer again had assumed it was entitled to carry forward a previous estimated payment to satisfy any potential liability for the period ending January 31, 2022.

In both instances Taxpayer relied on the carryforward of estimated payments made before the years reported on the two returns here at issue. In both instances the Department disagreed because - as Taxpayer explained - the estimated payments were "locked" in the reporting periods 2017, 2018, and 2020.

Taxpayer had assumed that the earlier payments would "domino" forward through the years and that the estimated payments would fully satisfy any liability attributable to the returns filed for the periods ending January 31, 2021, and January 31, 2022.

The Department disagreed because of a previous, unrelated tax dispute entirely unrelated to the returns filed for the January 31, 2021, and January 31, 2022, periods. In effect, the Department determined that the estimated payments were subsumed by previous tax liabilities. Therefore, the Department assessed Taxpayer additional income tax, penalties, and interest. Taxpayer disagreed with the penalty portion of the two assessments and submitted multiple protests.

No administrative hearing was scheduled or held. Instead, this Letter of Findings is based on the Taxpayer's written protests and on information provided after the two protests were filed.

DISCUSSION

The issue is whether Taxpayer has met its burden of establishing that it is entitled to an abatement of the underpayment penalties stemming from the filing of its returns for the two periods ending January 31, 2021, and January 31, 2022.

This Letter of Findings addresses only the two underpayment penalties outlined in Taxpayer's protests dated October 26, 2022, and June 15, 2023. This Letter of Findings does not address any of the substantive tax issues previously or currently in dispute.

[IC 6-3-4-4.1\(b\)](#) imposes on each taxpayer the responsibility to make and pay a "declaration of estimated tax for the taxable years" if the amount of that estimated is more than \$1,000. *Id.*

[IC 6-3-4-4.1\(c\)](#) requires that:

Every corporation subject to the adjusted gross income tax liability imposed by this article shall be required to report and pay an estimated tax equal to the lesser of:

- (1) twenty-five percent (25[percent]) of such corporation's estimated adjusted gross income tax liability for the taxable year; or
- (2) the annualized income installment calculated in the manner provided by Section 6655(e) of the Internal Revenue Code as applied to the corporation's liability for adjusted gross income tax.

Under [IC 6-3-4-4.1\(d\)](#), a taxpayer may avoid the penalty if it acts to meet specified threshold requirements.

The penalty prescribed by [IC 6-8.1-10-2.1\(b\)](#) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:

- (1) the annualized income installment calculated under subsection (c); or
- (2) twenty-five percent (25[percent]) of the final tax liability for the taxpayer's previous taxable year. *Id.*

[IC 6-8.1-10-2.1\(a\)\(3\)](#) requires that the ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. [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."

However, [IC 6-8.1-10-2.1\(d\)](#) provides 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 willful neglect 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 meet the "reasonable cause" standard, 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 [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 negligence penalty - is presumptively valid.

Whatever the results of the underlying substantive tax dispute may be, Taxpayer argues that it did what was expected of it, that its expectations and assumptions constituted reasonable cause, that in filing the returns for the periods ending January 31, 2021, and January 31, 2022, it "exercised ordinary business care and prudence," and that any deficiency was "not due to willful neglect" [IC 6-8.1-10-2.1\(d\)](#).

The Department agrees that Taxpayer has met its statutory burden under [IC 6-8.1-5-1\(c\)](#) of establishing that the two underpayment penalties should be abated.

FINDING

Taxpayer's protest is sustained.

September 26, 2023

Finding Replaces: New

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