

**Letter of Findings: 01-20210112
For the Tax Year 2017**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Document.

HOLDING

Individual failed to provide supporting documents demonstrating reasonable cause for penalty abatement. Interest was statutorily required and therefore was not waivable.

ISSUE**I. Tax Administration - Penalties and Interest.**

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

Taxpayer requests that the Department waive the penalties and statutory interest.

STATEMENT OF FACTS

Taxpayer, an individual, currently resides in the State of Illinois. During 2017, Taxpayer frequented casinos in Indiana and had winnings. The casinos withheld tax on each of his winnings. Thereafter, Taxpayer filed his 2017 income tax return and an amended return - as a professional gambler - claiming certain deductions, reporting income taxes due, and receiving tax refunds from Indiana.

The Indiana Department of Revenue ("Department") conducted an audit of Taxpayer's 2017 records. The Department disallowed the deductions claimed by Taxpayer. In addition to assessing additional income tax, the Department also imposed interest, and penalties.

Taxpayer did not dispute the disallowance of deductions but requested that the Department abate penalties and interest. Taxpayer further requested that the Department make the final determination without a hearing.

This Letter of Findings ensues, and addresses Taxpayer's protest of the proposed assessment based on the information available to the Department and within the file. Additional facts will be provided as necessary.

I. Tax Administration - Penalties and Interest.**DISCUSSION**

Pursuant to the audit, the Department determined that Taxpayer was not a professional gambler because Taxpayer failed to provide sufficient documentation to substantiate that he qualified as a professional gambler and was entitled to the deductions. The Department assessed additional income tax, penalties, and interest as a result. Taxpayer did not dispute the assessment but requested that the Department abate penalties and interest.

"Every nonresident individual having for the taxable year any gross income from sources within the state of Indiana" must file the Indiana return, reporting his income derived from Indiana source. IC § 6-3-4-1(2).

IC § 6-3-4-4.1(b) states:

Every individual who has adjusted gross income subject to the tax imposed by this article and from which tax is not withheld under the requirements of section 8 of this chapter shall make a declaration of estimated tax for the taxable year. However, no such declaration shall be required if the estimated tax can reasonably be expected to be less than one thousand dollars (\$1,000). In the case of an underpayment of the estimated tax as provided in Section 6654 of the Internal Revenue Code, there shall be added to the tax a penalty in an

amount prescribed by [IC 6-8.1-10-2.1\(b\)](#).

Pursuant to IC § 6-8.1-10-2.1(a)(3) and (b)(4), the Department may assess a ten (10) percent negligence penalty if a person that incurs, upon examination by the Department, a deficiency that is due to negligence and the amount of deficiency as finally determined by the Department.

[45 IAC 15-11-2\(b\)](#) further states:

"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.

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

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.

In this instance, Taxpayer requested penalty abatement, stating the following:

I am in receipt of your audit results. While I was pursuing a career in professional gambling for a few years, I do not have the documentation you were requesting and am unable to appeal your findings.

...

I failed miserably as a professional. Although you are taxing me on W2G jackpots won, every single one of them was actually a loss, since they were all lost back to the casino. I lost hundreds of thousands of dollars over the years and my financial situation is poor because of my gambling.

...

Therefore, I am . . . respectfully requesting that you waive the Penalty and Interest charges. I am requesting this concession, as the income you are taxing me on was in fact not income, but losses.

Taxpayer, however, did not provide any documentation to "affirmatively establish[] that the failure to . . . pay the full amount of tax due . . . or pay a deficiency was due to reasonable cause and not due to negligence." Therefore, the Department is not able to agree the penalties should be abated.

In addition, IC § 6-8.1-10-1(a) states, if "a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment." The Department does not have the authority to waive the interest. IC § 6-8.1-10-1(e).

FINDING

Taxpayer's protest is respectfully denied.

July 1, 2021

Posted: 08/25/2021 by Legislative Services Agency
An [html](#) version of this document.