

Letter of Findings: 02-20210053
Corporate Income Tax
For the Year 2019

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Company demonstrated that the penalty for underpayment of estimated corporate income tax should be abated.

ISSUE

I. Corporate Tax - Assessment of Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-3-4-4.1; 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 15-11-2](#).

Taxpayer argues its underpayment penalty should be abated.

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") issued a proposed assessment for penalty based on underpayment of estimated taxes for 2019. Taxpayer disagreed with the assessment and submitted a protest to that effect. Taxpayer requested resolution without an administrative hearing. This Letter of Findings results.

I. Corporate Tax - Assessment of Penalty

DISCUSSION

Taxpayer is a company conducting business in Indiana. Taxpayer is a subsidiary of a parent company, which moved some of its business to Taxpayer in 2018. This new business activity increased Taxpayer's apportionment rate for calculating Indiana corporate income tax to 14.37 percent. The new percentage increased the estimated income tax payments Taxpayer should have been paying in 2018 and 2019 because income taxes previously attributed to parent company were now attributed to Taxpayer.

Taxpayer claims it was not aware of the changes to its tax liability until it finalized its 2018 tax returns in the third quarter of 2019. This timing was due to filing procedures Taxpayer relied on in prior tax years. When Taxpayer discovered the changes in both its income and estimated taxes due, it immediately filed an IT-20 and submitted estimated tax payments with the return. It should also be noted that when parent company finalized its income taxes for 2018, its tax liability decreased substantially due to the new apportionment of business to Taxpayer.

The Indiana Department of Revenue ("Department") issued a proposed assessment for penalty based on underpayment of estimated taxes for 2018 as well as the penalty at issue in the instant protest. The Department waived the penalty for 2018 but did not waive the penalty for 2019.

The issue is whether Taxpayer has met its burden and established that the Department should exercise its authority to abate the underpayment penalty assessed to Taxpayer.

IC § 6-8.1-5-1(c) states that "[t]he burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). An assessment, including Taxpayer's penalty assessment, is therefore presumed valid. A taxpayer must provide documentation explaining and supporting that the Department's position is wrong.

IC § 6-3-4-4.1 provides, in part:

(c) 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.

A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated adjusted gross income tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing estimated adjusted gross income tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year. The department shall prescribe the manner and forms for such reporting and payment.

(d) 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.

In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25[percent]) of the corporation's final adjusted gross income tax liability for such taxable year.

IC § 6-8.1-10-2.1(d) states that "[i]f 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."

Under [45 IAC 15-11-2\(b\)](#) defines reasonable cause as follows:

"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.

[45 IAC 15-11-2\(c\)](#) allows the Department to waive a negligence penalty imposed under [IC 6-8.1-10-1](#) if a taxpayer "affirmatively establishes 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." To show "reasonable cause," a taxpayer must show it exercised "ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed." *Id.*

Taxpayer explains that its failure to pay estimated corporate income tax was due to new business activity transitioned from the parent company to Taxpayer. The apportionment rate was finalized during tax preparation in the third quarter of 2019. When Taxpayer realized its increased taxable income required increased payment of estimated corporate income tax, it immediately paid the required amounts for past due quarters along with the current quarter. The actions of Taxpayer indicate the failure to pay the estimated tax was due to "reasonable cause."

Additionally, Taxpayer also received an abatement for the 2018 tax year. Generally, a taxpayer would not be entitled to abatements in consecutive tax years related to the same issue. However, the circumstances related to penalties levied in 2018 and 2019 stemmed from a single event, namely the transfer of new business activity from parent company to Taxpayer and recalculation of Taxpayer's apportionment percentage for Indiana.

Based on a case-by-case review of the circumstances, the Department agrees that the penalty should be abated. Taxpayer's underpayment of estimated taxes for 2018 and 2019 arose from a single event. Taxpayer took steps to correct the situation and remitted the underpayment prior to any action by the Department. Taxpayer has since taken steps to prevent a similar underpayment from occurring. Taxpayer has not had any other issues paying estimated taxes and is current on its accounts. Therefore, Taxpayer has met the requirements of IC §

6-8.1-10-2.1(d) regarding waiver of the penalty imposed under IC § 6-3-4-4.1(d). However, it should be noted that future requests by Taxpayer for abatements may not result in the same outcome.

FINDING

Taxpayer's protest is sustained.

November 17, 2021

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