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DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0023
Individual Income Tax
For the Calendar Year 1996

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer, in a letter dated January 6, 1999 protested the penalty assessed and enclosed copies of earlier correspondence with the Indiana Department of Revenue. The Department issued its proposed assessment on Liability No. 96-0439874 on December 8,1997 for a balance of tax, penalty and interest in the amount of $4016.59. On February 9, 1998, taxpayer protested the assessment and states the estimated payments applied are in error. It submitted a recap of its withholding and estimated payments with a balance due of $980 paid with the return.

On May 18, 1998, the taxpayer submitted a copy of Form IT-2210 filed with its 1996 IT-40 indicating no penalty due and advised that he has not received a response to his February 9, 1998 letter. The inquiry asked when his refund would be paid.

On July 1, 1998, the department issued letters of resolution for liability nos. 96-0462168 and 96-0439874 and on July 8, 1998, the tax examiner advised the taxpayer that a refund of $151.38 would be issued shortly. The refund was based upon the corrected tax due in the amount of $730.00 on line 27 (a result of taxpayer's failure to include a $250 IT-9 payment on his return), a late filing penalty on line 32 of $73.00 and interest due on line 33 in the amount of $25.62 or a total of $828.62. The

payment of $980 submitted with the return resulted in an approved refund of $151.38. On August 3, 1998 taxpayer wrote the Compliance Division with a copy to the Commissioner that the department had erred for the third time regarding the penalty and he would like his $98.62. On October 1, 1998 and November 5, 1998, the department advised the taxpayer that a refund of $151.38 was issued on August 24, 1998 and a refund of $152.00 was issued on August 25, 1998 and requested the taxpayer to submit a check for the reimbursement of the overpayment in the amount of $151.38. Taxpayer was advised that failure to submit the payment within 30 days would result in the issuance of a billing that will include penalty and interest charges.

Taxpayer in a letter dated November 11, 1998 states he has never received a response to his August 3, 1998 letter in reference to the erroneous penalty assessment of $98.62 and states the refund due the State of Indiana is not $152 but $53.38 as his original overpayment was $250.00. Taxpayer erred in stating he never received a response as a copy of a letter dated August 24, 1998 written by the Compliance supervisor was faxed from taxpayer's office. The letter goes into detail why the penalty is due and copies of IC 6-8.1-6-1, IC 6-8.1-10-1, and IC 6-8.1-10-2.1,
with specific items highlighted, were forwarded. The supervisor's letter reiterated that a check in the amount of 151.38 would be issued and the account would be in balance. On December 8, 1998, the compliance supervisor advised the taxpayer that the case would be referred to Legal and on December 16, 1998, the department billed the taxpayer for the original overpayment in the amount of $151.38 plus penalty and interest as the taxpayer failed to submit the duplicate payment within the thirty days. On January 6, 1999, the taxpayer wrote a short recap to a conversation held with the Protest Review Supervisor.

The hearing officer has obtained the tax return and correspondence relating to the assessment and found that the tax return was not filed until October 15, 1997 with a balance due of $980.00. The review includes the application of a $250 payment not shown by the taxpayer on its tax return. The department has taken the $250 refund and deducted the $73.00 penalty and $25.62 interest from the period of April 15, 1997 to October 15, 1997 leaving a balance due the taxpayer in the amount of $151.38. The penalty is for the late payment of taxes as indicated by IC 6-8.1-10-2. The department erroneously issued duplicate refunds and requested the duplicate in two letters. Taxpayer failed to refund the duplicate payment.

IC 6-8.1-6-1 (a) states:
If a person responsible for filing a tax return is unable to file the return by the appropriate due date, he may petition the department, before that due date, for a filing extension. The person must include with the petition a payment of at least ninety-percent (90%) of the tax that is reasonably expected to be due on the due date. No request has been received by the department.

Further taxpayer did not have a valid extension on file. Taxpayer requested an extension of time to file its return on August 13, 1997 with the IRS, which is clearly after the due date of the return.
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I. <u>Tax Administration</u> – Penalty

<u>DISCUSSION</u>

Taxpayer states it does not owe a penalty and has refused to return a duplicate refund to the department.

Taxpayer has been advised in various telephone conversations and letters that a duplicate refund was issued which must be returned or penalty and interest would be added. Taxpayer has responded in various telephone calls and letters, some of which are addressed in the Statement of Facts above. Taxpayer believes no penalty should be assessed as he paid the tax timely.

The facts however are that the taxpayer made a $980 payment on October 15, 1997 which is clearly late and IC 6-8.1-10-2 (a) clearly states:

> If a person fails to file a return for any of the listed taxes or fails to pay the full amount of tax shown on his return on or before the due date for the return or payment, incurs upon examination by the department, a deficiency which is due to negligence, or fails to timely remit any tax held in trust for the state, the person is subject to a penalty.

The taxpayer failed to remit the tax timely. Payment was not made until October 15, 1997 which is clearly after the due date.

FINDING

Taxpayer's protest is denied.

DW/RW/MR 990423