

Letter of Findings Number: 05-0445P

Withholding Tax

For the months of January, February, March, April, and May of 2005

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ISSUE**I. Tax Administration – Penalty**

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

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The taxpayer was assessed penalty and interest for the late filing and payment of five monthly withholding tax returns for the months of January, February, March, April, and May of 2005.

The taxpayer received a filing frequency change letter for a subsidiary of the taxpayer but erroneously construed the filing frequency change letter to be for the taxpayer. The taxpayer erroneously changed the early filer due date to the 30th of the month for the taxpayer. This scenario resulted in the monthly withholding tax returns in question being filed ten days late for each month.

The taxpayer is an out-of-state company.

I. Tax Administration – Penalty**DISCUSSION**

The taxpayer requests the penalty be abated as the error (1) could be amnesty eligible, (2) the error was not the result of willful negligence, and (3) the penalty is harsh in relation to the error.

With regard to Amnesty, the liabilities do not qualify for Amnesty as the periods in question happened after the Amnesty eligible period of any liability ending before July 1, 2004.

With regard to willful negligence, the taxpayer is not assessed the willful negligence penalty. The taxpayer is being assessed the penalty for inattention. [45 IAC 15-11-2\(b\)](#)

The taxpayer had a prior penalty abatement in February 2000 for about \$30,000. There are several Letter of Findings on file in the Indiana Register that will abate a penalty when the error is unusual and the taxpayer has a quality compliance record. As the taxpayer had a prior abatement, the taxpayer's compliance record is construed to be a negative factor in the abatement of penalty.

The taxpayer stated the penalty is harsh in relation to the error. Departmental tax decisions are controlled by the Indiana Code. The Indiana Code states penalty is to be applied in the event the taxpayer makes an inattentive error. As the taxpayer misconstrued the filing date in each of the five monthly periods, the taxpayer is considered by the Indiana Code to have been inattentive to tax duties in each of the five monthly periods. Therefore, penalty is applicable to each of the five periods.

A comment was made in hearing that the Department may have not been timely in issuing the liabilities. The billing process for the Department is driven by periodic timetables within the Department's computer system. A review of the timetable for the taxpayer indicated the billing process was timely according to Department procedures. Furthermore, the billings were issued within the Statute of Limitations as deemed by I.C. 6-8.1-5-2(a). Therefore, none of the five liabilities would be abated on this issue.

In conclusion, the Department finds the taxpayer inattentive to tax compliance duties. Inattention is negligence and negligence is subject to penalty. Thus, the taxpayer's penalty protest is denied.

FINDING

The taxpayer's penalty protest is denied.

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