

Letter of Findings Number: 06-0183P  
Income Tax  
For the Calendar Year 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 late penalty was assessed on the late payment of the calendar year income tax return for the year 2005. The penalty was assessed as the taxpayer forgot to include the check with the return. The taxpayer is an Indiana company.

**I. Tax Administration – Penalty****DISCUSSION**

The taxpayer requests the penalty be abated as the error was inadvertent and the taxpayer has a quality compliance history.

The Department will waive penalty when the error involves an unusual error, and, the taxpayer has a good compliance record.

The Department agrees that the taxpayer has a quality compliance record. However, forgetting to include the check with the tax return is not an unusual error. Thus, the taxpayer fails to establish reasonable cause.

The regulation which controls the application of penalty is [45 IAC 15-11-2](#)(b) which 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 finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

**FINDING**

The taxpayer's penalty protest is denied.

*Posted: 09/20/2006 by Legislative Services Agency*

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