

## DEPARTMENT OF STATE REVENUE

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Letter of Findings Number: 06-0019P  
Withholding Tax  
For the Calendar Year 2004

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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 filing of W2s for the calendar year 2004. The W2s were received by the Department fifteen days late. The taxpayer is an Indiana company.

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

The taxpayer requests the penalty be abated as the W2s were mailed timely.

The Department received the W-2s fifteen days late. State tax regulations state the burden of proof is on the taxpayer as to why the W2s were received late by the Department. As the taxpayer has given no explanation, the taxpayer is deemed to be inattentive in the mailing of the W2s.

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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