

**Letter of Findings: 06-0004P
Indiana Withholding Tax
For Tax Year 2004**

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ISSUE

I. Tax Administration - Penalty

Authority: [IC 6-8.1-10-6](#)

Taxpayer protests the imposition of penalty associated with their failure to timely file with the Department Form WH-3 and state copies of Form W-2.

STATEMENT OF FACTS

Taxpayer had filed Form WH-3 ("Annual Withholding Tax Reconciliation Return") and state copies of Form W-2 ("Wage and Tax Statement") late. For the 2004 tax year, in order to be considered "timely filed," Taxpayer was required to submit Form WH-3 and state copies of Form W-2 (collectively, "Information Returns") to the Department no later than February 28, 2005. The Information Returns submitted were postmarked March 15, 2005.

Pursuant to [IC 6-8.1-10-6](#) (b), the Department assessed a penalty on the taxpayer's failure to timely file their Information Returns. Taxpayer requested abatement of this penalty. The taxpayer's protest letter requesting the abatement of penalty states that, "we believe that we timely filed the notices on or before the due date into the postal system. . ." The Department's records indicate the returns were filed on March 15, 2005 which is clearly after the February 28, 2005 due date of the returns.

DISCUSSION

I. Tax Administration-Penalty

Taxpayer's only basis for request of abatement of penalty is their belief that the returns in question were filed timely. The Department's records indicate to the contrary and find the returns were in fact filed fifteen days late.

The liability at issue represents a penalty assessment based on taxpayer's failure to timely file information returns. The language of [IC 6-8.1-10-6](#) (b), which authorizes penalties for the late filing of "information returns," states:

If a person fails to file an information return required by the department, a penalty of ten dollars (\$10) for each failure to file a timely return, not to exceed twenty-five thousand dollars (\$25,000) in any one (1) calendar year, is imposed.

The Department's records indicate the returns were not timely filed and the taxpayer has provided no evidence to disprove this determination.

FINDING

Taxpayer's protest is denied.

Posted: 11/01/2006 by Legislative Services Agency

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