

**Letter of Findings Number: 06-0306P
Withholding 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 filing of W-2s and form WH-3 for the calendar year 2005. The taxpayer is an out-of-state company.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as (1) the taxpayer relied on an agent to properly file the W-2s, and (2) there were unforeseen processing errors.

With regard to the agency argument, the Department takes the position that the taxpayer, as principal, is responsible for the actions of the agent. Therefore, as the agent committed an error, the taxpayer is responsible.

With regard to the unforeseen errors, the agent was not satisfied the W-2s were correct, and therefore elected not to file the W-2s by the due date. The taxpayer did not want to file the W-2s as is and then file a corrected W-2 as this would create too much work.

The Department points out the compliance record for the taxpayer is not good. The taxpayer has had two abatements in the last five years. This compliance record is a negative factor in the decision to abate penalty.

The regulation which references reasonable care and inattention 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 did not act with reasonable care as the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the taxpayer's penalty protest is denied.

FINDING

The taxpayer's penalty protest is denied.

Posted: 08/01/2007 by Legislative Services Agency

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