

DEPARTMENT OF STATE REVENUE

03-20070500P.LOF

Letter of Findings Number: 07-0500P
Withholding Tax
For Tax Year 2006

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ISSUE**I. Tax Administration—Ten Percent Negligence Penalty.**

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

The taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

The taxpayer was assessed a ten percent negligence penalty for the late payment of nonresident partner withholding taxes for the period ending December 31, 2006. Taxpayer protested the penalty assessment.

I. Tax Administration—Ten Percent Negligence Penalty.**DISCUSSION**

The taxpayer protests the imposition of the ten percent negligence penalty imposed for the late filing and payment of its nonresident partner withholding tax returns pursuant to IC § 6-8.1-10-2.1.

IC § 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer."

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

The taxpayer asserts that Indiana had an unusual due date for nonresident partnership withholding tax payments—March 15 as opposed to the April 15 deadline for filing individual returns and paying individual tax—and therefore missed the proper March 15 deadline due to filing season issues. However, the taxpayer has not provided sufficient legal or factual grounds to determine that it acted with reasonable care and therefore be subject to penalty waiver.

FINDING

The taxpayer's protest is denied.

Posted: 04/02/2008 by Legislative Services Agency

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