DEPARTMENT OF STATE REVENUE

03-20080049P.LOF

Letter of Findings: 08-0049P
Withholding Tax
For the Tax Years Ending December 31, 2004, and 2005

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ISSUE

I. Withholding Tax – Determination of Income.
Authority: IC § 6-3-2-2.

The taxpayer seeks abatement of the twenty-percent penalty for failure to file Form WH-1s and remit withholding tax on its non-resident shareholder.

STATEMENT OF FACTS

The taxpayer is an S corporation. The taxpayer failed to file Form WH-1s and withhold tax on its non-resident shareholder for the years ending December 31, 2004, and 2005. The taxpayer was assessed tax and a twenty-percent penalty pursuant to IC § 6-8.1-10-2.1(h). The taxpayer protested the income upon which the penalty assessment was based, and this Letter of Findings results.

I. Withholding Tax – Determination of Income.

DISCUSSION

The taxpayer does not argue against imposition of the penalty; instead, the taxpayer argues that the income used to tax and penalty in the assessments was incorrect.

Under IC § 6-3-2-2, corporations are required to apportion their business income in accordance with IC § 6-3-2-2(b)-(f). The taxpayer has provided sufficient information to conclude that the assessments were based on its unapportioned income rather than its apportioned income. Therefore, the tax and penalty assessments should be adjusted to reflect the taxpayer's apportioned income.

FINDING

The taxpayer's protest is sustained.

CONCLUSION

The taxpayer's tax and penalty assessments should be determined based on its apportioned income.

Posted: 05/28/2008 by Legislative Services Agency
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