

Letter of Findings Number: 08-0053
Withholding Tax
For Tax Year 2006

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ISSUE

I. Tax Administration- Information Return Penalty.

Authority: IC § 6-8.1-10-2.1, IC § 6-8.1-10-6; Treas. Reg. § 31.6071(a)-1.

The taxpayer protests the imposition of the penalty for filing information returns late.

STATEMENT OF FACTS

The taxpayer was assessed a penalty for the late filing of Forms W-2 for the year 2006. Taxpayer protested the penalty assessment.

I. Tax Administration- Information Return Penalty.

DISCUSSION

The taxpayer protests the penalty for late filing of Forms W-2 for 2003. IC § 6-8.1-10-6 states:

(a) As used in this section, "information return" means the following when a statute or rule requires the following to be filed with the department:

(1) Schedule K-1 of form IT-20S, IT-41, or IT-65.

(2) Any form, statement, or schedule required to be filed with the department with respect to an amount from which tax is required to be deducted and withheld under [IC 6](#) or from which tax would be required to be deducted and withheld but for an exemption under [IC 6](#).

(3) Any form, statement, or schedule required to be filed with the Internal Revenue Service under 26 CFR 301.6721-1(g) (1993). The term does not include form IT-20FIT, IT-20S, IT-20SC, IT-41, or IT-65.

(b) 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.

(c) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.

The taxpayer argues that the due date for filing Form W-2 with the Department (the end of February) was different from the federal deadline (the end of March). However, the general federal deadline for filing is in fact the end of February for calendar years, with electronically filed information returns due on March 31. Treas. Reg. § 31.6071(a)-1(a)(3) (amended 2006).

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalties imposed under *that section* (i.e., IC § 6-8.1-10-2.1) upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." However, the penalty imposed was assessed based on IC § 6-8.1-10-6, not IC § 6-8.1-10-2.1. As such, the penalty was mandatory and cannot be waived under the facts and circumstances of this case.

FINDING

The taxpayer's protest is denied.

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