

DEPARTMENT OF STATE REVENUE

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Letter of Findings Number: 08-0183P
Individual Income Tax-Penalty
For the Period 2004

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ISSUE**I. Tax Administration–Penalty.**

Authority: IC § 6-8.1-10-5.

Taxpayer protests the imposition of the one-hundred percent penalty for remitting a dishonored check.

STATEMENT OF FACTS

Taxpayer was assessed a ten-percent penalty for issuing a check that was subsequently dishonored. The Indiana Department of Revenue ("Department") later issued a one hundred-percent penalty for the dishonored check. Taxpayer protested the imposition of the penalty. Additional facts will be supplied as necessary.

I. Tax Administration–Penalty.**DISCUSSION**

Taxpayer protests the imposition of a penalty for issuing a subsequently-dishonored check.

Under IC § 6-8.1-10-5, a person who issues a check upon which the Department is unable to obtain payment—in whole or in part—is subject to penalties based on the amount upon which the Department is unable to collect. IC § 6-8.1-10-5(a) provides for a ten-percent penalty. Under IC § 6-8.1-10-5(b), the Department is required to then give the person ten days in which to pay the tax and penalty, or the penalty increases to one hundred percent. However, the penalties can be waived upon a showing of reasonable cause.

Taxpayer asserts that he contacted the Department when he initially discovered that the check was drawn on insufficient funds. Taxpayer has provided an explanation for the reason the check was overdrawn. Due to the timing issues with regards to the payment and the notices sent by the Department, Taxpayer has not provided sufficient evidence to conclude that the ten-percent penalty was improper. However, Taxpayer has provided sufficient evidence to show reasonable cause with respect to the one hundred-percent penalty.

FINDING

Taxpayer's protest is sustained with respect to the one-hundred percent penalty and denied with respect to the ten-percent penalty.

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