

**Letter of Findings Number: 08-0356P  
Withholding Tax  
For Tax Year 2006**

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**ISSUE**

**I. Tax Administration—Information Return Penalty.**

**Authority:** IC § 6-8.1-10-6.

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 2006. 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 C.F.R. 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. (Emphasis added)

Taxpayer argues it has two account numbers ("Account 1" and "Account 3"). Taxpayer asserts that it filed the annual withholding tax form, Form WH-3, and Forms W-2 under Account 3, but deposited the tax under Account 1. Taxpayer then sent in a WH-3 under Account 1 and an amended WH-3 zeroing out Account 3.

Taxpayer has provided information that substantiates that it in fact filed the Forms W-2 in a timely manner. Therefore, Taxpayer's protest for late filing of the Forms W-2 and Form WH-3 is sustained.

**FINDING**

The taxpayer's protest is sustained.

*Posted: 11/26/2008 by Legislative Services Agency*

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