

**Letter of Findings: 08-0571P**  
**Withholding Tax**  
**For the Tax Year Ending December 31, 2005**

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**ISSUE**

**I. Withholding Tax - Twenty-Percent Penalty.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-10-2.1.

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

**STATEMENT OF FACTS**

The taxpayer is an S corporation. The taxpayer failed to file Form WH-1s and withhold tax on its non-resident shareholders for the year ending December 31, 2005. The taxpayer was assessed a twenty-percent penalty pursuant to IC § 6-8.1-10-2.1(h). Taxpayer protests that the penalty was based on an erroneous amount of tax.

**I. Withholding Tax - Twenty-Percent Penalty.**

**DISCUSSION**

The taxpayer argues that it is entitled to a partial abatement of the twenty-percent penalty for failure to file Form WH-1 and remit withholding tax on its non-resident shareholders. In particular, Taxpayer argues that its Indiana income was less than half the amount upon which the Department based its penalty assessment.

Under IC § 6-8.1-5-1(b) (now (c)), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment – including the penalty – is presumptively valid.

The taxpayer has provided sufficient information to conclude that its 2005 Indiana-source income was \$313,470, and therefore the penalty should have been \$2,132.

**FINDING**

The taxpayer's protest is sustained. The penalty is reduced to \$2,132.

*Posted: 12/17/2008 by Legislative Services Agency*

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