

**Letter of Findings Number: 08-0543P
Withholding Tax-Penalty
For the Period January 2008**

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ISSUE

I. Tax Administration-Penalty.

Authority: IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a corporation doing business in Indiana. Taxpayer was required to file its employee withholding tax return and remit tax for January 2008 on or before February 20, 2008. However, Taxpayer did not remit the tax until February 29, 2008. Taxpayer protested the imposition of penalty and interest.

I. Tax Administration-Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty and interest on Taxpayer's failure to timely remit withholding tax on behalf of its employees.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer protests that it made an error in treating itself as a monthly filer, whose returns are due on the last day of the following month, as opposed to an early filer whose returns are due on the 20th day of the following month. Taxpayer notes that this error occurred for one month rather than a prolonged period of time. The consistent exercise of due care with the one exception for the month at issue provides evidence of reasonable cause. Furthermore, Taxpayer has a consistent history of compliance in filing its returns and remitting its taxes over the past eight years. Taken together, the one-time nature of the error and consistent compliance with Indiana tax filing and payment requirements justifies penalty waiver.

Taxpayer further protested the imposition of interest. Under IC § 6-8.1-10-1(e), interest cannot be waived by the Department.

FINDING

Taxpayer's protest is sustained on the penalty assessment and denied on the interest assessment.

Posted: 01/28/2009 by Legislative Services Agency

