

Letter of Findings Number: 08-0649P
Withholding Tax-Penalty
For the Periods January 2008 and March 2008

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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 two separate periods for issuing electronic checks that were subsequently dishonored. The Indiana Department of Revenue ("Department") later issued one-hundred percent penalties for the dishonored checks. Taxpayer protested the imposition of the penalties. 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 has not provided sufficient information to justify waiver of the ten percent penalty for dishonored payments. However, Taxpayer has provided information that it did not receive the required statutory notice for imposition of the one hundred percent penalty, and therefore Taxpayer is sustained with respect to that 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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