

**Letter of Findings Number: 08-0671P
Late Payment Penalty
For the Period 2001**

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ISSUE

I. Tax Administration – Late Payment Penalty.

Authority: 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 was assessed a penalty for late payment of withholding tax for two periods in 2001. Taxpayer protested the penalty and requested a hearing. A phone hearing was held and this Letter of Findings ensues. Additional facts will be provided as necessary.

I. Tax Administration - Late Payment Penalty.

DISCUSSION

Taxpayer protests the imposition of a penalty for late payment of withholding tax. Taxpayer argued that it had entered into an installment payment plan with the Department in 2004 for periods dating back to 2001.

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 presented sufficient evidence to demonstrate that it considered that all its 2001 liabilities were rolled into its installment plan with the Department. Taxpayer regularly made its installment payments which ended in 2005. Taxpayer has no other outstanding liabilities. Taxpayer has demonstrated it had reasonable cause to assume that it had fulfilled its 2001 liabilities to the Department.

FINDING

Taxpayer's protest is sustained.

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