

**Letter of Findings Number: 09-0098P
Withholding - Late Payment Penalty
For the Tax Year 2007**

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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

The Indiana Department of Revenue ("Department") assessed Taxpayer a penalty for late payment of withholding tax. Taxpayer protested the penalty, but did not request a hearing on the protest. This Letter of Findings is written based on the information in Taxpayer's protest file.

I. Tax Administration – Late Payment Penalty.

DISCUSSION

Taxpayer protests the imposition of a penalty for late payment of withholding tax.

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 provided documentation that it followed its accountant's electronically-generated instruction as to when to file its withholding tax, and was incorrectly instructed to file by April 15, 2008, when the due date was actually March 17, 2008. Generally reliance on the advice of professionals on a clear statutory requirement such as a filing deadline is not enough to overcome a negligence penalty. In this instance Taxpayer has a record of timely payments with the Department and paid the tax upon which the penalty in question is based shortly after its filing deadline, therefore the Department will waive the penalty. Taxpayer is placed on notice, that in the future such an error will constitute negligence.

FINDING

Taxpayer's protest is sustained.

Posted: 05/27/2009 by Legislative Services Agency

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