

**Letter of Findings Number: 09-0040P
Withholding Tax-Penalty
For the Years 2005-2007**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

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

Taxpayers are two corporations doing business in Indiana but will be referred to throughout this Letter of Findings as "Taxpayer". Taxpayer established employee withholding accounts for Illinois; however, the employees were subject to Indiana withholding tax. The Department conducted an audit and assessed tax, penalty, and interest for the years in question. 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 asserts that the failure to withhold was the result of "inadvertent error" and not intentional. However, the standard for imposition of the ten-percent penalty is the failure to exercise reasonable care—negligence—rather than an intentional action or inaction on Taxpayer's part. Taxpayer has not provided sufficient legal or factual grounds to demonstrate that it acted with reasonable cause regarding its employee withholding tax obligations.

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 denied.

Posted: 06/24/2009 by Legislative Services Agency
An [html](#) version of this document.