

Supplemental Letter of Findings Number: 09-0199
Withholding Tax
For Tax Year 2005

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ISSUE

I. Withholding Tax - Twenty-Percent Penalty.

Authority: IC § 6-8.1-10-2.1.

Taxpayer seeks abatement of the twenty-percent penalty for failure to file Form WH-1 and remit withholding tax on non-resident shareholders.

STATEMENT OF FACTS

Taxpayer is an S-Corporation. Taxpayer failed to file Form WH-1s and withhold tax on its non-resident shareholders for the year 2005. The Indiana Department of Revenue ("Department") assessed a twenty-percent penalty pursuant to IC § 6-8.1-10-2.1(h). Taxpayer protested the imposition of penalty. The Hearing Officer wrote and issued a Letter of Findings (LOF) denying Taxpayer's protest, primarily based on lack of participation in the hearing process and lack of adequate explanation for Taxpayer's failure to file Form WH-1s and to withhold tax on its non-resident shareholders. Upon receipt of the LOF, Taxpayer contacted another Hearing Officer who had handled parallel protests for a group of related S Corporations with protests identical to Taxpayer's protest. Taxpayer explained that its protest was identical to the protests of the related S Corporations and that it did not believe that this protest should have been denied when the other protests were sustained. Upon review of the related S Corporation's protests, the Department determined that a rehearing was warranted. Further facts will be supplied as required.

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DISCUSSION

Taxpayer protests the imposition of twenty-percent penalty for failure to file Form WH-1s and to withhold tax on its non-resident shareholders. Taxpayer provided explanation for a group of related S Corporations, of which Taxpayer is a member, in parallel hearings. Those related taxpayers were sustained and Taxpayer believes that it should be sustained as well.

IC §6-8.1-10-2.1(d) states:

If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

Upon review of the analysis and documentation which was provided to the Department in the hearings for the related S Corporations on identical protests, and which includes facts and explanation for Taxpayer, Taxpayer has shown that the failure to file Form WH-1s and to withhold tax on its non-resident shareholders was due to reasonable cause and not due to willful neglect. This satisfies the requirements of IC § 6-8.1-10-2.1(d).

FINDING

Taxpayer's protest is sustained.

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