

**Letter of Findings Number: 09-0184P
Withholding Tax-Penalty
For the Period December 2008**

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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 and interest.

STATEMENT OF FACTS

Taxpayer is a corporation doing business in Indiana. For the month of December 2008, Taxpayer remitted its monthly withholding tax after the statutory deadline. The Indiana Department of Revenue ("Department") assessed interest and penalty on the late tax payment. Taxpayer protested the interest and penalty.

I. Tax Administration–Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to remit its monthly withholding tax in a timely manner.

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 has provided sufficient information of its prior compliance history and of the one-time circumstances that led to the late payment to conclude that Taxpayer acted with ordinary business care for its withholding tax duties. Therefore, Taxpayer's penalty should be abated.

Taxpayer also protested the assessment of interest. Under IC § 6-8.1-10-1(e), interest cannot be waived.

FINDING

Taxpayer's protest is sustained with regard to the penalty assessed and denied with regard to the interest assessed.

Posted: 08/26/2009 by Legislative Services Agency

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