

**Letter of Findings Number: 09-0543P**  
**Individual Income Tax – Penalty and Interest**  
**For the Period 2005**

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**ISSUES**

**I. Tax Administration–Estimated Tax Penalty.**

**Authority:** IC § 6-3-4-4.1.

Taxpayer protests the imposition of a proposed penalty assessment.

**II. Tax Administration–Interest.**

**Authority:** IC § 6-8.1-10-1.

Taxpayer protests the imposition of interest on a proposed assessment.

**STATEMENT OF FACTS**

Taxpayer is an individual. The Indiana Department of Revenue ("Department") issued a proposed assessment of use tax for 2005 and interest for tangible personal property upon which Taxpayer had not paid sales tax at the time of purchase. Taxpayer protested the interest.

Taxpayer separately protested a penalty assessment. Based on Taxpayer's correspondence, Taxpayer apparently protested what he thought was a penalty on the use tax. However, the penalty was for failure to make sufficient estimated tax payments during 2005.

The Department sent a letter to Taxpayer stating that Taxpayer could request a hearing by replying to the letter within twenty (20) days of the date of the letter. Taxpayer did not reply to the Department's letter. Due to Taxpayer's failure to reply, this Letter of Findings is written based on the information in Taxpayer's protest file and other Department records relating to Taxpayer.

**I. Tax Administration–Estimated Tax Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of a penalty. Based on Taxpayer's correspondence, Taxpayer apparently protested what he thought was a penalty on the use tax. After further review of the file, the penalty was for failure to make sufficient estimated tax payments during 2005.

IC § 6-3-4-4.1 imposes a penalty for failure to pay estimated taxes during a taxable year. The imposition of the penalty against Taxpayer was proper. However, Taxpayer paid the penalty in 2006 with his original income tax return. Thus, the penalty assessed in 2009 was improper.

**FINDING**

Taxpayer's protest is sustained with respect to the penalty assessment issued in 2009.

**II. Tax Administration–Interest.**

**DISCUSSION**

Taxpayer also protests the imposition of interest on the use tax imposed as a result of the Department's audit. With regard to interest, IC § 6-8.1-10-1(e) provides that the Department cannot waive interest. Thus, Taxpayer's protest of the interest assessed is denied.

**FINDING**

Taxpayer's protest is denied.

**CONCLUSION**

Taxpayer's protest is sustained with respect to the proposed penalty assessment issued in 2009. Taxpayer's interest protest is denied.

*Posted: 11/25/2009 by Legislative Services Agency*

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