

## DEPARTMENT OF STATE REVENUE

03-20090798P.LOF

**Letter of Findings Number: 09-0798P  
Withholding Tax-Penalty  
For the Period 2006**

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**ISSUE****I. Tax Administration–Penalty.**

**Authority:** [IC 6-8.1-5-1](#); IC § 6-8.1-10-6.

Taxpayer protests the imposition of the penalty for late filing of information returns.

**STATEMENT OF FACTS**

Taxpayer is a corporation doing business in Indiana. Taxpayer filed its employees' W-2 forms and the WH-3 form after the due date for filing such returns. Taxpayer was assessed a \$10 penalty per each W-2 and WH-3 form filed after the due date. Taxpayer protested the imposition of the penalty.

**I. Tax Administration–Penalty.****DISCUSSION**

Taxpayer protests the imposition of the penalty on Taxpayer's failure to timely file forms W-2 and WH-3 on behalf of its employees. This penalty was imposed pursuant to IC § 6-8.1-10-6, which provides for a ten dollar (\$10) penalty for each information return submitted late. A form W-2 and a form WH-3 are informational returns within the scope of the statute.

Taxpayer contends that it did mail the W-2s and WH-3 for 2006. However, Taxpayer has no record of mailing the returns, though it does indicate that the WH-3 in the company's files is a copy rather than an original. Taxpayer further indicates that it sent W-2s "every year." However, the Department's records indicate that no WH-3—which generally accompany the forms W-2—was filed for the years 2004 through 2007.

However, for proposed assessments such as the penalty imposed against Taxpayer—IC § 6-8.1-5-1(c) provides that the assessment is presumed to be correct, and the burden of showing that the assessment was improper is on the taxpayer. While the Department recognizes Taxpayer's arguments, Taxpayer has not provided sufficient information to establish that the penalty imposition was improper.

**FINDING**

Taxpayer's protest is denied.

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