

**Letter of Findings Number: 09-0821P
Withholding Tax-Penalty and Interest
For the Year 2008**

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ISSUES

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

II. Tax Administration–Interest.

Authority: IC § 6-8.1-10-1.

Taxpayer protests the imposition of interest on its tax liability.

STATEMENT OF FACTS

Taxpayer is an S corporation operating in Indiana. Taxpayer remitted approximately \$46,000 of tax on behalf of its nonresident shareholder on April 15, 2009. The Department assessed penalty and interest because the payment was submitted after the March 16, 2009, deadline for payment. Taxpayer protests the penalty and interest.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty imposed because of Taxpayer's failure to remit the full amount of withholding tax on or before the due date for payment.

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 argues that it has complex reporting deadlines due to its multistate operation. As a result, Taxpayer claims that it was unable to compute the Indiana withholding by the deadline for submitting withholding tax payments.

Even assuming that the exact amount of withholding could not be determined by March 16, 2009, Taxpayer did not even make a partial payment toward the potential liability. By not making any payment toward its potential liability prior to the due date for withholding tax payments, Taxpayer has not demonstrated reasonable cause sufficient to permit penalty waiver.

FINDING

Taxpayer's protest is denied.

II. Tax Administration–Interest.

DISCUSSION

Taxpayer protests the imposition of interest with respect to its assessment. Under IC § 6-8.1-10-1(e), interest cannot be waived in Taxpayer's protest.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protest is denied on all issues.

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