

**Letter of Findings Number: 09-0963P
Dishonored Check Penalty
For the Period 2009**

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ISSUE

I. Tax Administration – Dishonored Check Penalty.

Authority: IC § 6-8.1-10-5; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the dishonored check penalty.

STATEMENT OF FACTS

Taxpayer was assessed a ten-percent penalty for issuing a check that was subsequently dishonored. The Indiana Department of Revenue ("Department") later issued a one-hundred percent penalty for the dishonored check. Taxpayer paid the base tax due and the interest. However, Taxpayer protested the imposition of the penalty. Additional facts will be supplied as necessary.

I. Tax Administration – Dishonored Check Penalty.

DISCUSSION

Taxpayer protests the imposition of a penalty for issuing a subsequently-dishonored check.

Under IC § 6-8.1-10.5, a person who issues a check upon which the Department is unable to obtain payment—in whole or in part—is subject to penalties based on the amount upon which the Department is unable to collect. IC § 6-8.1-10-5(a) provides for a ten-percent penalty. Under IC § 6-8.1-10-5(b), the Department is required to then give the person ten days in which to pay the tax and penalty, or the penalty increases to one-hundred percent. However, the penalties can be waived upon a showing of reasonable cause.

Reasonable cause is defined in [45 IAC 15-11-2\(b\)](#) as:

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.

Taxpayer argues that it relied on its bank, with which it has an agreement to pay government agency bills before other bills, to timely and properly pay tax due. Taxpayer provided a copy of its account balance for the date in question to show that it had sufficient funds had the tax payment been made first per the agreement with the bank.

Had this been the only instance of dishonored or late payments to the Department, Taxpayer may have been able to argue its reliance interest on its bank as reasonable cause for its checks being dishonored. However, Taxpayer has recently had other dishonored payments. Negligence is determined on a case by case basis according to the facts and circumstances of each taxpayer. [45 IAC 15-11-2\(b\)](#). The Department finds Taxpayer was inattentive to tax duties. Inattention is negligence and negligence, under these facts, is subject to one-hundred percent penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

Taxpayer's protest is denied.

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