

**Letter of Findings Number: 10-0068P  
Withholding Tax-Penalty  
For the Period 2008**

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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 company 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.

The payroll company which handled Taxpayer's withholding return filings filed a protest on behalf of Taxpayer pursuant to an executed power of attorney. The Department conducted a telephone hearing and this Letter of Findings results.

**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 states that it mailed the informational returns on or about February 27, 2009. However, the returns were mailed to the incorrect state. Later, the returns were mailed to Indiana, but were mailed after the March 2, 2009, deadline for the returns.

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.

Taxpayer asserts that it has a good payment record. Further, the payroll company responsible for Taxpayer's withholding tax payments and returns has noted that it has undertaken a multistep review process to ensure that misfiled returns—such as occurred with Taxpayer—does not occur again. Finally, the payroll company has stated that the person responsible for the misdirected returns is no longer employed by the payroll company.

In reviewing Taxpayer's payment history, the Department requested information on the period the payroll company had managed Taxpayer's withholding tax responsibilities. Taxpayer was given a February 22, 2010, deadline for providing this information. Taxpayer did not provide the requested information on or before that date.

A review of Taxpayer's records shows, in addition to the current liability, six late payment penalties (one abated), one returns with a partial remittance, five desk audit liabilities, three regular audit liabilities, and three liabilities based on the failure to file tax returns (two cancelled). While the Department recognizes the payroll company's limited culpability in Taxpayer's overall compliance history, there is not sufficient information to justify penalty waiver in this case.

**FINDING**

Taxpayer's protest is denied.

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