

**Letter of Findings Number: 10-0110P  
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; [45 IAC 15-11-2](#).

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 provided the information for this taxpayer.

During the period the payroll company managed Taxpayer's withholding tax responsibilities, the current liability is the first assessment against Taxpayer for withholding tax. However, for 2009, Taxpayer has not submitted any withholding tax returns despite having an open account. The currently protested liability may justify waiver if it was Taxpayer's only withholding tax liability while the payroll company managed Taxpayer's account. However, the failure to correctly file the 2008 W-2 and WH-3 forms in a timely manner, when coupled with the failure to file any withholding tax returns for 2009, demonstrates a lack of ordinary business care necessary under [45 IAC 15-11-2](#) to justify penalty waiver.

**FINDING**

Taxpayer's protest is denied.

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