

**Letter of Findings Number: 10-0193P  
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 Indiana Department of Revenue ("Department") sent a letter to Taxpayer stating that Taxpayer could request a hearing by replying to the letter within twenty (20) days of the date of the letter. Taxpayer did not reply to the Department's letter. Due to Taxpayer's failure to reply, this Letter of Findings is written based on the information in Taxpayer's protest file and other Department records relating to Taxpayer.

**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 hired a third-party payroll company to handle its payroll duties. At the time the 2008 W-2 forms were due, the payroll company experienced "mechanical problems that prevented them from processing the Form W-2s" and therefore prevented Taxpayer from filing the W-2 forms.

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 has stated that the "mechanical problem" by the payroll company resulted in the late submission of W-2 forms. However, the forms were submitted on March 27, 2009—almost a month after the March 2, 2009, deadline. Furthermore, Taxpayer submitted its 2007 W-2 forms after the statutory deadline as well. Based on the facts and circumstances of Taxpayer's case, Taxpayer has not provided sufficient grounds to justify penalty abatement.

**FINDING**

Taxpayer's protest is denied.

*Posted: 06/23/2010 by Legislative Services Agency*

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