

**Letter of Findings Number: 10-0269P
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. The Indiana Department of Revenue ("Department") sent a letter to Taxpayer explaining that it had twenty (20) days to request a hearing or provide additional information. However, neither Taxpayer nor the payroll company requested a hearing during the twenty-day period. Thus, the Letter of Findings is based on the information contained in Taxpayer's protest file.

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. However, in reviewing the information supplied by the payroll company, the information provided does not provide sufficient legal or factual grounds to justify penalty waiver.

FINDING

Taxpayer's protest is denied.

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