

**Letter of Findings Number: 09-1027P
Withholding Tax
For Tax Years 2006-08**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 3.1-1-115](#); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of ten percent negligence penalties.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation. The Indiana Department of Revenue ("Department") issued proposed assessments for withholding tax, ten percent negligence penalties, and interest for the tax years 2006, 2007, and 2008. Taxpayer does not protest the proposed assessments of withholding tax and interest, but protests the imposition of negligence penalties. Taxpayer did not request a hearing. The Letter of Findings was written based on the materials in the file. Further facts will be supplied as required.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of ten percent negligence penalties on assessments made for the tax years 2006-08. Taxpayer states that it acted in good faith regarding its Indiana tax duties for these years. Specifically, Taxpayer had employees who worked in Indiana but resided in Illinois. Taxpayer states that it was led to understand that a reciprocity agreement existed between Indiana and Illinois regarding the collection and remittance of withholding taxes. Taxpayer states that [45 IAC 3.1-1-115](#) provides that Indiana and Illinois have a reciprocal agreement under which neither state will impose its adjusted gross income tax on residents of one state who earn income in the other state. Taxpayer believes that these circumstances are sufficient to warrant waiver of penalty.

The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to [45 IAC 15-11-2\(b\)](#), which states:

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.

(Emphasis added.)

[45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

The Department's audit explains that Taxpayer did not withhold on its Illinois resident employees. After reviewing the circumstances which resulted in the assessments of withholding taxes for this audit period, the Department agrees with Taxpayer that it exercised ordinary business care and therefore Taxpayer's actions did constitute reasonable cause, as provided by [45 IAC 15-11-2\(c\)](#). The negligence penalties will be dismissed. However, the Department takes this opportunity to confirm that Indiana and Illinois no longer have a reciprocal agreement regarding adjusted gross income tax and that any taxpayer with employees who reside in Illinois are required to withhold Indiana adjusted gross income taxes and county income taxes on those employees in the same manner it would do so for Indiana resident employees.

FINDING

Taxpayer's protest is sustained.

Posted: 09/01/2010 by Legislative Services Agency
An [html](#) version of this document.