

**LETTER OF FINDINGS NUMBER: 10-0244P**  
**Utility Receipts Tax**  
**For Tax Year 2008**

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**ISSUE**

**I. Tax Administration—Late Payment Penalty.**

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

Taxpayer protests the imposition of a ten percent late payment penalty.

**STATEMENT OF FACTS**

Taxpayer is a corporation doing business in Indiana. For the last two quarters of 2008, Taxpayer filed its Utility Receipts Tax ("URT") returns after the due dates. The Indiana Department of Revenue ("Department") issued proposed assessments to Taxpayer for late payment penalties. Taxpayer protested the imposition of penalties. Taxpayer did not request an administrative hearing. This Letter of Findings was written based on the facts found in the protest file.

**I. Tax Administration—Late Payment Penalty.**

**DISCUSSION**

The Department issued proposed assessments for ten percent late payment penalties for the tax year in question. Taxpayer protests the imposition of penalties. The Department refers to IC § 6-8.1-10-2.1, which states in relevant part:

(a) If a person:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department;

the person is subject to a penalty.

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10 [percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

(c) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

(e) A person who wishes to avoid the penalty imposed under this section must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.

(f) The department shall adopt rules under [IC 4-22-2](#) to prescribe the circumstances that constitute reasonable cause and negligence for purposes of this section.

....

(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.

In this case, Taxpayer failed to file two quarterly 2008 URT returns by the due dates, and so was subject to penalty under IC § 6-8.1-10-2.1(a). Taxpayer has affirmatively established that its failure to file the returns by the due dates was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2](#)(c).

**FINDING**

Taxpayer's protest is sustained.

*Posted: 09/29/2010 by Legislative Services Agency*

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