

**Letter of Findings Number: 10-0441
Withholding Tax-Penalty
For the Periods 2007 and 2008**

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ISSUE

I. Tax Administration–Penalty.

Authority: 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 corporation doing business in Indiana. Taxpayer filed its employees' W-2 forms and the WH-3 forms after the due date for filing such returns. Taxpayer was assessed a \$10 penalty for each W-2 and WH-3 form filed after the due date. Taxpayer protested the imposition of the penalty.

I. Tax Administration–Penalty.

DISCUSSION

Taxpayer protests the imposition of the penalty for 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. Forms W-2 and WH-3 are informational returns within the scope of the statute.

Taxpayer argues that it was "a new employer that had just started paying wages in 2007." However, Department records indicate that Taxpayer had filed employee withholding tax returns since 2004. Further, Taxpayer asserts that "[w]e were under the assumption that they were due at the same time that the Federal W-2s were due." While electronically-filed W-2s are due at the end of March pursuant to Internal Revenue Service procedures, the Department has determined that the due date is the last day of February, even if the federal deadline is different. Thus, though the returns were submitted in March of the year following the tax year for which income taxes were withheld, Taxpayer filed after Indiana's deadline and has not provided sufficient legal or factual grounds to justify penalty waiver.

FINDING

Taxpayer's protest is denied.

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