

**Letter of Findings Number: 10-0447P**  
**Withholding Tax-Penalty**  
**For the Periods February 2010 and March 2010**

**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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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.

**ISSUES**

**I. Tax Administration–Negligence Penalty.**

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

Taxpayer protests the imposition of the ten-percent negligence penalty.

**II. Tax Administration–Interest.**

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

Taxpayer protests the imposition of interest.

**STATEMENT OF FACTS**

Taxpayer is a corporation doing business in Indiana. Prior to January 2010, Taxpayer had one withholding tax location for both employee withholding and other Indiana tax withholding. Taxpayer added a new "location" solely for purposes of employee withholding tax. A current employee who handled the various withholding taxes trained another employee for employee withholding tax.

However, for February and March 2010, Taxpayer's two employees who were responsible for withholding taxes each thought the other employee had submitted the employee withholding tax. When this error was realized, Taxpayer immediately submitted the withholding tax payments. Both payments were submitted after the statutory deadline for such payments. As a result of the late payment, the Indiana Department of Revenue ("Department") imposed penalty and interest. Taxpayer protested the interest and penalty assessments.

The Department sent Taxpayer three letters indicating that Taxpayer had twenty (20) days to submit additional information in support of its protest or to request a hearing. Taxpayer did not submit additional information or request a hearing. As a result, this Letter of Findings is written based on Taxpayer's previously-submitted information and Department records relating to Taxpayer.

**I. Tax Administration–Negligence Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of the ten-percent negligence penalty on Taxpayer's failure to remit employee withholding tax.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "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.

(c) 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. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer failed to ensure that over \$1,000,000 in withholding tax for two periods was remitted to the

Department. Taxpayer failed to ensure its tax payment arrangements were adequate during the transition. By failing to take the necessary actions to ensure that no confusion occurred during the transition from one withholding account to two accounts, Taxpayer has not established "reasonable cause" sufficient to justify penalty waiver.

**FINDING**

Taxpayer's protest is denied.

**II. Tax Administration–Interest.**

**DISCUSSION**

Taxpayer protests the imposition of interest with respect to its late payment of tax. For taxes unpaid by the due date for payment, IC § 6-8.1-10-1(b) provides for the imposition of interest. IC § 6-8.1-10-1(e), provides that the Department cannot waive interest.

**FINDING**

Taxpayer's protest is denied.

**CONCLUSION**

Taxpayer's protest is denied in full.

*Posted: 11/24/2010 by Legislative Services Agency*  
An [html](#) version of this document.