

**Letter of Findings Number: 10-0473P
Withholding Tax-Penalty
For the Period April 2010**

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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 § 6-8.1-10-1.

Taxpayer protests the imposition of interest on its tax liability.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. For April 2010, Taxpayer remitted its employee withholding tax after the statutory due date. Taxpayer was assessed interest and penalty on the tax. Taxpayer protested the imposition of interest and penalty.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten-percent negligence penalty on Taxpayer's failure to remit withholding tax in a timely manner.

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 asserts that the employee who handled the withholding tax was out of the office due to medical reasons. Upon the employee's return one week after the due date for payment, Taxpayer made the required withholding tax payment. Based on the information provided by Taxpayer regarding the employee's illness and its prior tax compliance record, Taxpayer has provided sufficient information to justify penalty waiver.

FINDING

Taxpayer's protest is sustained.

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 sustained with regard to negligence penalty. Taxpayer's protest is denied with regard to interest imposed on the late payment

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