

**Letter of Findings Number: 10-0613P
Individual Income Tax-Penalty
For the Year 2010**

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ISSUE

I. Tax Administration–Penalty.

Authority: IC § 6-8.1-10-5; IC § 6-8.1-10-1.

Taxpayer protests the imposition of the ten-percent penalty for remitting a dishonored payment.

STATEMENT OF FACTS

Taxpayer was assessed a ten-percent penalty for issuing a payment that was subsequently dishonored. The Indiana Department of Revenue ("Department") later issued a ten-percent penalty for the dishonored check. Taxpayer protested the imposition of the penalty and interest on the payment. Additional facts will be supplied as necessary.

I. Tax Administration–Penalty.

DISCUSSION

Taxpayer protests the imposition of a penalty for issuing a subsequently-dishonored payment.

Under IC § 6-8.1-10-5, a person who issues a check or other payment draft upon which the Department is unable to obtain payment—in whole or in part—is subject to penalties based on the amount upon which the Department is unable to collect. IC § 6-8.1-10-5 (a) provides for a ten-percent penalty. Under IC § 6-8.1-10-5 (b), the Department is required to then give the person ten days in which to pay the tax and penalty, or the penalty increases to one hundred percent. However, the penalties can be waived upon a showing of reasonable cause.

Taxpayer argues that he used the incorrect checkbook for his tax payment and that this was his first dishonored check penalty. Department records indicate that this is Taxpayer's first dishonored payment penalty. Taxpayer otherwise has a solid tax compliance history. Based on the one-time nature of the penalty and Taxpayer's compliance history, Taxpayer has provided sufficient information to establish reasonable cause for the dishonored payment, and thus the penalty is waived.

Taxpayer further protests interest on the tax payments. In Taxpayer's case, the proper payment was made prior to the date on which interest can be imposed under IC § 6-8.1-10-1, and thus any interest otherwise assessed is abated as well.

FINDING

Taxpayer's protest is sustained.

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