

**Letter of Findings Number: 10-0592P
Withholding Tax-Penalty
For the Period June 2009**

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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–Fees.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4.

Taxpayer protests the imposition of fees.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. For its June 2009 withholding tax return and payment, Taxpayer processed its return on July 10, 2009. When it filed its return, Taxpayer entered the date for the electronic funds transfer draft in the Indiana Department of Revenue's ("Department") INTAX program. However, when typing the date on which the draft was to occur, Taxpayer inadvertently entered July 29 as opposed to July 20 in the relevant field. The effect of the erroneous entry was that the electronic funds transfer occurred on July 29, nine days after the statutory due date, as opposed to the intended date of July 20 (the statutory due date). As a result of the late payment the Department imposed penalty and interest. Taxpayer protested the penalty assessment.

The Department issued a proposed penalty and interest assessment on September 8, 2009. Taxpayer responded to the Department on September 21, 2009, protesting the penalty. Between September 21, 2009, and August 4, 2010, Taxpayer and the Department corresponded regarding the assessment. However, between those dates, the liability advanced to a demand notice and eventually a tax warrant stage. Taxpayer also protested the fees resulting from the tax warrant and subsequent fees added by a collection agency employed on behalf of the Department.

The Department sent Taxpayer a letter 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.

In this case, Taxpayer made a typographical error which resulted in the late payment. However, while the error was inadvertent, an inadvertent error is still negligence. Taxpayer has not established "reasonable cause" sufficient to justify penalty waiver.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Fees.

DISCUSSION

Taxpayer protests the imposition of fees with regard to its liability. The issue is whether the imposition of fees was proper in this case.

Under IC § 6-8.1-5-1(d), a taxpayer may protest a proposed assessment within forty-five days of the issuance of the assessment. Once that forty-five day period ends or the Department rules on a protest of a proposed assessment, the Department may issue a demand notice under IC § 6-8.1-8-2(a). Under IC § 6-8.1-8-2(a)(1), a taxpayer has ten days from the issuance of the demand notice to either pay or "show reasonable cause for not paying the amount demanded." Only upon the expiration of the demand notice period can the Department issue a tax warrant under IC § 6-8.1-8-2(b). Upon issuance of the tax warrant, the Department can assess collection fees under IC § 6-8.1-8-2(b) and a collection agency may impose its permitted fees under IC § 6-8.1-8-4.

Taxpayer has provided sufficient information to conclude that it timely filed a protest under IC § 6-8.1-5-1(d). Until that protest was denied, the proposed assessment should not have advanced to a demand notice stage and tax warrant stage. Thus, the imposition of collection fees and collection agency fees should not have occurred; therefore, Taxpayer is sustained on the fee imposition.

FINDING

Taxpayer's protest is sustained.

CONCLUSION

Taxpayer's protest is denied on the penalty and sustained on the fees imposed on the liability.

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