

**Letters of Findings Number: 03-20100654P; 03-20100655P; 04-20100656P  
Sales Tax, Withholding Tax, and Wireless Prepaid Tax-Penalty  
For the Periods August 2010 and September 2010**

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**ISSUE**

**I. Tax Administration—Penalty.**

**Authority:** IC § 6-8.1-10-2.1; IC § 6-8.1-10-5.

Taxpayer protests the imposition of the one hundred percent penalty for remitting dishonored tax payments.

**STATEMENT OF FACTS**

Taxpayer was assessed a ten-percent penalty for four dishonored tax payments. The Indiana Department of Revenue ("Department") later issued a one hundred percent penalty for the dishonored payments. Taxpayer protested the imposition of the penalty on the payments. Additional facts will be supplied as necessary.

**I. Tax Administration—Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of penalties for remitting subsequently-dishonored payments.

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 noted that the payments in question were the first payments Taxpayer made via electronic funds transfer. Taxpayer made a minor error in submitting the payments in question. While errors do not automatically justify penalty waiver, Taxpayer provided information demonstrating how the error occurred and that the error was the result of reasonable cause for purposes of IC § 6-8.1-10-5. However, the eventual tax payment was still remitted after the statutory deadline and thus is subject to late payment under IC § 6-8.1-10-2.1.

**FINDING**

Taxpayer's protest is sustained with regard to the dishonored payment penalty. Taxpayer is subject to the ten-percent late payment penalty.

*Posted: 02/23/2011 by Legislative Services Agency*

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