

Letter of Findings Number: 03-20100722P
Withholding Tax
For Tax Year 2009

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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

ISSUE

I. Tax Administration--Failure to File Information Return; Penalty.

Authority: IC § [IC 6-8.1-10-6](#), [45 IAC 15-11-6](#).

Taxpayer protests the imposition of a failure to file information return penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation. A third party representative filed Taxpayer's withholding return, form WH-3, timely and payment was remitted; however, representative used the incorrect TID (Taxpayer identification number) for Taxpayer. Upon notice, Taxpayer corrected the filing. The Indiana Department of Revenue imposed a failure to file information return penalty. Taxpayer protested the imposition of the failure to file information return penalty. Taxpayer did not request an administrative hearing. This Letter of Findings was written based on the facts found in the protest file.

I. Tax Administration-- Failure to File Information Return; Penalty.

DISCUSSION

The Department issued proposed assessments for failure to file information return penalty for the tax year in question. Taxpayer protests the imposition of penalty. The Department refers to IC § 6-8.1-10-6 (b), which states in relevant part:

If a person:

.... fails to file an information return required by the department, a penalty of ten dollars (\$10) for each failure to file a timely return, not to exceed twenty-five thousand dollars (\$25,000) in any one (1) calendar year, is imposed...

The Department refers to [45 IAC 15-11-6](#), which states:

For purposes of [IC 6-8.1-10-6](#), an "information return" shall constitute any return required by the Indiana Code, or department regulations to be filed by a Taxpayer which does not report a tax liability. Such returns include, but are not limited to:

- (1) An S corporation return.
- (2) A partnership return.
- (3) A W-2 return.
- (4) A WH-18 return.
- (5) Certain fiduciary returns.
- (6) Not-for-profit returns.

In this case, Taxpayer's withholding tax return contained the wrong TID and the Department determined that this constituted failure to file an information return and so was subject to a penalty under IC § 6-8.1-10-6(b). Taxpayer has affirmatively established that its return was in fact filed timely by a third party representative and the tax remitted, but said return merely contained a typographical error.

FINDING

Taxpayer's protest is sustained.

Posted: 05/25/2011 by Legislative Services Agency
An [html](#) version of this document.