

Letters of Findings Number: 01-20110566P
Penalty
For the Period 2010

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ISSUE

I. Tax Administration—Penalty.

Authority: IC § 6-8.1-10-5.

Taxpayers protest the imposition of the 100 percent penalty for a non-sufficient fund check.

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") assessed Taxpayers a 100 percent penalty for a non-sufficient fund (NSF) check. Taxpayers protested the imposition of the penalty; this Letter of Findings results. Additional facts will be supplied as necessary.

I. Tax Administration—Penalty.

DISCUSSION

At the outset, the Department notes that IC § 6-8.1-10-5 states:

(a) If a person makes a tax payment with a check, credit card, debit card, or electronic funds transfer, and the department is unable to obtain payment on the check, credit card, debit card, or electronic funds transfer for its full face amount when the check, credit card, debit card, or electronic funds transfer is presented for payment through normal banking channels, a penalty of ten percent (10[percent]) of the unpaid tax or the value of the check, credit card, debit card, or electronic funds transfer, whichever is smaller, is imposed.

(b) When a penalty is imposed under subsection (a), the department shall notify the person by mail that the check, credit card, debit card, or electronic funds transfer was not honored and that the person has ten (10) days after the date the notice is mailed to pay the tax and the penalty either in cash, by certified check, or other guaranteed payment. If the person fails to make the payment within the ten (10) day period, the penalty is increased to one hundred percent (100[percent]) multiplied by the value of the check, credit card, debit card, or electronic funds transfer, or the unpaid tax, whichever is smaller.

(c) If a person has been assessed a penalty under subsection (a) more than one (1) time, the department may require all future payments for all listed taxes to be remitted with guaranteed funds.

(d) If the person subject to the penalty under this section can show that there is reasonable cause for the check, credit card, debit card, or electronic funds transfer not being honored, the department may waive the penalty imposed under this section.

(Emphasis added).

Under IC § 6-8.1-10-5(d), the penalty can be waived upon a showing of reasonable cause.

Taxpayers, in correspondence to the Department, state:

Sometime the week of August 15th [Taxpayers] received and signed for a certified letter... from the Indiana Dept. of [R]evenue [] stating "demand notice for payment" for a tax burden on 2010 individual taxes....

Taxpayers state that they telephoned the Department, to find out the details of the notice. The Department's employee, per Taxpayers, explained the nature of the notice; according to Taxpayers, the Department's employee explained that Taxpayers had incurred the 100 percent penalty due to insufficient funds (as provided by IC § 6-8.1-10-5).

As part of their protest, Taxpayers provided the Department with various documents. Among the documents provided by Taxpayers was information from Taxpayers' bank relating to the NSF check. Based upon the documents and information provided by Taxpayers, the Department finds that Taxpayers have established reasonable cause for purposes of IC § 6-8.1-10-5.

FINDING

Taxpayers' protest of the 100 percent penalty is sustained.

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