

**Letter of Findings: 03-20110607P
Withholding Tax - Late Payment Penalty
For the Tax Period December 2010**

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ISSUE

I. Withholding Tax – Penalty.

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

Taxpayer protests the imposition of the penalty for late filing of information returns.

STATEMENT OF FACTS

Taxpayer is a corporation doing business in Indiana. Taxpayer filed its employees' W-2 forms and the WH-3 form after the due date for filing such returns. Taxpayer was assessed a \$10 penalty per each W-2 and WH-3 form filed after the due date. Taxpayer protested the imposition of the penalty.

I. Withholding Tax – Penalty.

DISCUSSION

Taxpayer protests the imposition of the penalty on Taxpayer's failure to timely file forms W-2 and WH-3 on behalf of its employees. This penalty was imposed pursuant to IC § 6-8.1-10-6, which provides for a ten dollar (\$10) penalty for each information return submitted late. A form W-2 and a form WH-3 are informational returns within the scope of the statute.

IC § 6-8.1-10-6 states:

(a) As used in this section, "information return" means the following when a statute or rule requires the following to be filed with the department:

(1) Schedule K-1 of form IT-20S, IT-41, or IT-65.

(2) Any form, statement, or schedule required to be filed with the department with respect to an amount from which tax is required to be deducted and withheld under [IC 6](#) or from which tax would be required to be deducted and withheld but for an exemption under [IC 6](#).

(3) Any form, statement, or schedule required to be filed with the Internal Revenue Service under 26 CFR 301.6721-1(g) (1993). The term does not include form IT-20FIT, IT-20S, IT-20SC, IT-41, or IT-65.

(b) 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.

(c) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.

In this instance, Taxpayer has established that it qualifies for waiver of the penalty.

FINDING

Taxpayer's protest of the assessment of penalty is sustained.

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