

**Letter of Findings Number: 03-20120302P
Withholding Tax-Penalty
For the Period December 2011**

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ISSUE

I. Tax Administration–Penalty.

Authority: IC § 6-8.1-10-6; IC § 6-8.1-5-1(c)

Taxpayer protests the imposition of a proposed penalty.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. Taxpayer failed to timely file an information return required by the Department. Taxpayer was assessed a \$10 penalty per each W-2 filed after the due date. Taxpayer filed a protest regarding the penalty. A telephone hearing was held, and this Letter of Findings results. More facts will be provided below as needed.

I. Tax Administration–Penalty.

DISCUSSION

Taxpayer, in a letter dated March 16, 2012, states:

In as much as all withholding tax payments have been made in a timely fashion, and this was an information only return, there clearly was no intent to defraud the State of Indiana. Our lapse in electronically filing the information returns for the 2011 W-2's was merely an oversight on our part. We believe that we have "fine-tuned" our processes and procedures so that this unfortunate incident will not happen again.

The relevant statute is IC § 6-8.1-10-6:

(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 C.F.R. 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.

The Department notes that a W-2 form is, for the purposes of IC § 6-8.1-10-6, an informational return.

In a letter dated May 22, 2012, and at the hearing, Taxpayer made the argument that the Department penalized it, but waived a penalty for an affiliate. Taxpayer then argues that the imposition of the penalty against it is thus "arbitrary[.]"

Under IC § 6-8.1-5-1(c) the Department's proposed assessment (in this instance, the penalty), is presumed to be correct; Taxpayer bears the burden of showing that the assessment was improper. The Department notes that Taxpayer itself has previously had a penalty waived by the Department. Taxpayer's argument is not that the penalty is incorrect—instead Taxpayer argues that it is "arbitrary" that it was not waived. But there is nothing arbitrary in the penalty assessment, nor in the fact that the Department, after waiving a proposed penalty against Taxpayer in the past, has chosen not to do so again. Taxpayer has not provided any legal or factual grounds to permit penalty waiver.

FINDING

Taxpayer's protest is respectfully denied.

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