

**Letter of Findings: 03-20150545P**  
**Withholding Tax**  
**For the Year 2015**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

**HOLDING**

Indiana Business established that its four-day late filing of its withholding tax return was not "willful neglect," and the Department agreed that the ten-percent penalty should be abated.

**ISSUE**

**I. Withholding Tax - Late Payment Penalty.**

**Authority:** IC § 6-8.1-5-1(c); IC § 6-8.1-10-2.1(a)(2); IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer argues the Department should exercise its discretion to abate a ten-percent late payment penalty.

**STATEMENT OF FACTS**

Taxpayer is an Indiana business that collects and remits withholding tax on wages it pay its employees. Taxpayer filed a 2015 withholding tax return. The return was four days late. The Indiana Department of Revenue ("Department") issued a proposed ten-percent "late" penalty assessment.

Taxpayer disagreed with the assessment imposing the ten-percent "late" penalty. Taxpayer protested and asked that the Department abate the penalty. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. This Letter of Findings results.

**I. Withholding Tax - Late Payment Penalty.**

**DISCUSSION**

The issue is whether Taxpayer is justified in asking that the Department abate a ten-percent late payment penalty.

Taxpayer filed a withholding tax return four days after the date on which the return was due. As a result, the Department issued a proposed assessment. The penalty was assessed pursuant to IC § 6-8.1-10-2.1(a)(2) which imposes the penalty assessment if a taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment."

However, IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty."

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines "negligence" as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case by case basis according to the facts and circumstances of each taxpayer." Id.

Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed . . . ."

Under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person

against whom the proposed assessment is made." An assessment - including the late payment penalty - is presumptively valid.

In part, Taxpayer attributes the late filing to a computer software program. Taxpayer states that the software was programmed to report its withholding tax as a "monthly filer when it should have set up as an earlier filer." Taxpayer further explains that its software has since been "fixed and all subsequent payments have been remitted in a timely fashion."

To support its protest, Taxpayer submitted an affidavit prepared and signed by its "Accounts Payable Administrator." The administrator explained that she completed an initial reconciliation of its withholding account which revealed that the "July payroll and the amounts [due] did not agree." As explained in the affidavit, "I believed that the payment was not yet due and that I had adequate time to reconcile the payroll information as the [computer software] had not alerted me to a payment due . . . ."

Taxpayer's administrator maintains that she "exercised reasonable care, caution and diligence in the performance of [her] duties and remittance of the amounts owed the State."

It is not disputed that the return was untimely, but the Department agrees that the Taxpayer's performance of its responsibilities was not so egregious as to rise to the level of "willful neglect." Based on a "case-by-case" analysis and after reviewing "the facts and circumstances of each taxpayer" the Department agrees that the ten-percent penalty should be abated.

### **FINDING**

Taxpayer's protest is sustained.

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