

**Final Order Denying Refund: 03-20170734
Withholding Tax
For Tax Year 2014**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Staffing agency is liable for the late-filing penalty as there is no provision under Indiana law which allows for abatement of the penalty.

ISSUE

I. Tax Administration - Penalty.

Authority: IC § 6-8.1-10-6; IC § 6-8.1-10-2.1; [45 IAC 15-11-6](#).

Taxpayer seeks a refund of penalty imposed due to late filing of Indiana W-2s.

STATEMENT OF FACTS

Taxpayer is a staffing agency that outsources its payroll tax filing to an unrelated third-party payroll tax filing firm ("Payroll Firm"). Payroll Firm uses another third-party vendor to create electronic Form W-2s for purposes of electronic filing of payroll tax forms. Tax year 2014 was the first year Taxpayer used Payroll Firm for purposes of filing in Indiana. Due to a formatting error in the electronic form, Payroll Firm was unable to successfully import Taxpayer's nearly 1,100 W-2s into Indiana's INtax system. Instead, Payroll Firm manually entered the information, causing several of the W-2s to be filed late.

Taxpayer was assessed a penalty for the late filing. Taxpayer protested the penalty but its protest was not filed timely. As such, the proposed assessment went to warrant and Taxpayer's bank account was levied for the amount of the penalty. Taxpayer then filed a Claim for Refund ("GA-110L"), for the amount levied, which was denied. Taxpayer timely protested the denial and an administrative hearing was held. This Order results. Further facts will be provided as necessary.

I. Tax Administration - Penalty.

DISCUSSION

The Indiana Department of Revenue ("Department") assessed a \$10 penalty on each of Taxpayer's late filed Indiana W-2s. Taxpayer protests the assessment claiming that the forms were filed late due to a technical error and not willful neglect.

After receiving the penalty assessment, Taxpayer filed a late protest. The Department denied Taxpayer's late protest under IC § 6-8.1-10-2.1(d), which "requires a taxpayer to show that he or she failed to pay taxes in a timely manner due to reasonable cause and not willful neglect[.]" Taxpayer then filed a GA-110L which was denied in part because Taxpayer had "not shown reasonable cause for filing the above-mentioned tax return late."

A penalty under IC § 6-8.1-10-2.1 is a ten percent penalty resulting when a person:

- (1) fails to file a return for any of the listed taxes;
- (2) 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;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in fund acceptable to the department[.]

While penalties assessed under IC § 6-8.1-10-2.1 may be waived the penalty assessed in this case does not fall under IC § 6-8.1-10-2.1. Here, Taxpayer failed to timely file an information return. The relevant statute in this situation is IC § 6-8.1-10-6 which 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 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.

(Emphasis added).

According to [45 IAC 15-11-6](#):

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.

Taxpayer failed to file its 2014 W-2s in a timely manner, therefore incurring a \$10 per late W-2 under IC § 6-8.1-10-6. The Department notes that insofar as this penalty is concerned, there is no provision under Indiana law for abatement of the penalty. Therefore, Taxpayer's protest is denied.

FINDING

Taxpayer's protest is respectfully denied.

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