

**Letters of Findings: 03-20190251P
Withholding Tax
For the Tax Period October 2018**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Company did not provide sufficient evidence for the Department to abate the assessed penalty and interest.

ISSUE

I. Tax Administration—Penalty and interest.

Authority: IC § 6-3-4-8; IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; IC § 6-8.1-10-1; *Indiana Department of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-97](#); [45 IAC 15-11-2](#).

Taxpayer protests the penalty and interest assessed for late payment of withholding tax.

STATEMENT OF FACTS

Taxpayer is an Indiana company that failed to timely pay withholding tax which it collected from its employees for the month of October 2018. Although it did eventually pay withholding tax, the Indiana Department of Revenue ("Department") imposed a penalty and interest on the late payment. Taxpayer protested the imposition of penalty and interest. In its protest, Taxpayer opted for the Department to make its written decision based on the materials sent in with the protest. Therefore, no administrative hearing was held. This Letter of Findings is written based on the materials in the protest file. Further facts will be supplied as required.

I. Tax Administration—Penalty and interest.

DISCUSSION

Taxpayer protests the imposition of penalty and interest associated with the late payment of its October 2018 withholding tax. The Department notes that it is not permitted to waive interest under IC § 6-8.1-10-1(e). Conversely, penalty waiver is permitted if the taxpayer shows that the failure to timely pay the full amount of the tax was due to reasonable cause and not due to willful neglect.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of the statute even over an equally reasonable interpretation by another party." *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014)(internal quotes omitted). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

IC § 6-3-4-8(a) requires an employer to "withhold, collect, and pay over income tax on wages paid by such employer to such employee . . . [in] the amount prescribed in withholding instructions issued by the department." IC § 6-3-4-8(a)(1) specifically provides that the employer is liable for the amount that it was required to withhold.

These statutory requirements are restated in [45 IAC 3.1-1-97](#), which also explains that, "In the case of delinquency or nonpayment of withholding tax, the employer is liable for such tax, penalties, and interest." *Id.*

In this case, the Department issued a negligence penalty for the delinquent liability. [45 IAC 15-11-2\(b\)](#) clarifies the standard for the imposition of the negligence penalty as follows:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department waives negligence penalties in the event of an unusual error and when the taxpayer demonstrates a good compliance record. [45 IAC 15-11-2\(c\)](#) explains that:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. 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 this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The Department imposed a penalty on the basis that Taxpayer did not remit taxes to the Department by the due date. Taxpayer does not challenge that its payment was late, but instead asks the Department to consider its history of paying withholding taxes on time. Taxpayer takes the position that its past on-time payments justify waiving the assessed penalty.

In light of Taxpayer's argument, the Department reviewed the Taxpayer's payment records. Taxpayer has had multiple late payments in its recent history, including a waived penalty assessment in the year prior to this assessment. Based on the Taxpayer's recent non-compliance and lack of support for its claim that the delayed payment was an outlier, the Department denies the Taxpayer's request to waive this penalty. As explained above, interest may not be waived.

FINDING

Taxpayer's protest of the imposition of interest and penalty is denied.

April 30, 2019

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