

**Letter of Findings: 03-201901056P  
Withholding Tax  
For the Years 2016**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Company 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 - Late-filing 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(a)(3); IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer argues that it is entitled to an abatement of late filing penalty.

### STATEMENT OF FACTS

Taxpayer is an Indiana manufacturer that outsources its payroll tax filing to an unrelated third-party payroll tax filing firm ("Payroll Firm"). The Indiana Department of Revenue ("Department") conducted an audit which resulted in additional withholding tax due.

Taxpayer was also assessed a penalty for the late filing of its employees' W2s. Taxpayer protested the penalty. Taxpayer timely protested the assessment and an administrative hearing was held. This Letter of Findings results. Further facts will be provided as necessary.

#### I. Tax Administration - Late-filing Penalty.

### DISCUSSION

The Indiana Department of Revenue ("Department") assessed a \$10 penalty on each of Taxpayer's late filed Indiana W-2s. Taxpayer claimed that Payroll Firm submitted the W2 on a CD and was not made aware that the CDs were no longer accepted until it was too late. Taxpayer protests the assessment claiming that the forms were filed late due to a technical error and not willful neglect.

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 funds 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 2016 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.

October 7, 2019

*Posted: 12/25/2019 by Legislative Services Agency*  
An [html](#) version of this document.