

IC 6-8.1-10

Chapter 10. Penalties and Interest

IC 6-8.1-10-1

Liability for interest

Sec. 1. (a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

(b) The interest for a failure described in subsection (a) is the adjusted rate established by the commissioner under subsection (c), from the due date for payment. The interest applies to:

- (1) the full amount of the unpaid tax due if the person failed to file the return;
- (2) the amount of the tax that is not paid, if the person filed the return but failed to pay the full amount of tax shown on the return; or
- (3) the amount of the deficiency.

(c) The commissioner shall establish an adjusted rate of interest for a failure described in subsection (a) and for an excess tax payment on or before November 1 of each year. For purposes of subsection (b), the adjusted rate of interest shall be the percentage rounded to the nearest whole number that equals two (2) percentage points above the average investment yield on state money for the state's previous fiscal year, excluding pension fund investments, as determined by the treasurer of state on or before October 1 of each year and reported to the commissioner. For purposes of IC 6-8.1-9-2(c), the adjusted rate of interest for an excess tax payment must be the same as the adjusted rate of interest determined under this subsection for a failure described in subsection (a). The adjusted rates of interest established under this subsection shall take effect on January 1 of the immediately succeeding year.

(d) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.

(e) Except as provided by IC 6-8.1-3-17(c) and IC 6-8.1-5-2, the department may not waive the interest imposed under this section.

(f) Subsections (a) through (c) do not apply to a motor carrier fuel tax return.

As added by Acts 1980, P.L. 61, SEC.1. Amended by P.L. 60-1990, SEC.13; P.L. 48-1994, SEC.3; P.L. 2-1995, SEC.36; P.L. 2-2005, SEC.23; P.L. 236-2005, SEC.2; P.L. 1-2006, SEC.147; P.L. 211-2007, SEC.43.

IC 6-8.1-10-2

Repealed

(Repealed by P.L. 1-1991, SEC. 69.)

IC 6-8.1-10-2.1

Liability for penalty

Sec. 2.1. (a) If 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;

the person is subject to a penalty.

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10%) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

(c) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, 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.

(e) A person who wishes to avoid the penalty imposed under this section must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.

(f) The department shall adopt rules under IC 4-22-2 to prescribe the circumstances that constitute reasonable cause and negligence for purposes of this section.

(g) A person who fails to file a return for a listed tax that shows no tax liability for a taxable year, other than an information return (as defined in section 6 of this chapter), on or before the due date of the

return shall pay a penalty of ten dollars (\$10) for each day that the return is past due, up to a maximum of two hundred fifty dollars (\$250).

(h) A:

- (1) corporation which otherwise qualifies under IC 6-3-2-2.8(2);
- (2) partnership; or
- (3) trust;

that fails to withhold and pay any amount of tax required to be withheld under IC 6-3-4-12, IC 6-3-4-13, or IC 6-3-4-15 shall pay a penalty equal to twenty percent (20%) of the amount of tax required to be withheld under IC 6-3-4-12, IC 6-3-4-13, or IC 6-3-4-15. This penalty shall be in addition to any penalty imposed by section 6 of this chapter.

(i) Subsections (a) through (c) do not apply to a motor carrier fuel tax return.

(j) If a partnership or an S corporation fails to include all nonresidential individual partners or nonresidential individual shareholders in a composite return as required by IC 6-3-4-12(h) or IC 6-3-4-13(j), a penalty of five hundred dollars (\$500) per partnership or S corporation is imposed on the partnership or S corporation.

As added by P.L.1-1991, SEC.70. Amended by P.L.71-1993, SEC.26; P.L.18-1994, SEC.43; P.L.211-2007, SEC.44; P.L.182-2009(ss), SEC.258.

IC 6-8.1-10-3

Failure to file return; preparation by department; penalty

Sec. 3. (a) If a person fails to file a return on or before the due date, the department shall send him a notice, by United States mail, stating that he has thirty (30) days from the date the notice is mailed to file the return. If the person does not file the return within the thirty (30) day period, the department may prepare a return for him, based on the best information available to the department. The department prepared return is prima facie correct.

(b) If the department prepares a person's return under this section, the person is subject to a penalty of twenty percent (20%) of the unpaid tax. In the absence of fraud, the penalty imposed under this section is in place of and not in addition to the penalties imposed under any other section.

As added by Acts 1980, P.L.61, SEC.1.

IC 6-8.1-10-3.5

Failure to file return; penalty for past due returns

Sec. 3.5. If a person fails to file a return on or before the due date as required by IC 6-3-4-1(1) or IC 6-3-4-1(2), where no remittance is due with the return, the person is subject to a penalty of ten dollars (\$10) per day for each day that the return is past due, up to a maximum of five hundred dollars (\$500).

As added by P.L.131-2008, SEC.31.

IC 6-8.1-10-4

Failure to file return; fraudulent intent to evade tax; penalty

Sec. 4. (a) If a person fails to file a return or to make a full tax payment with that return with the fraudulent intent of evading the tax, the person is subject to a penalty.

(b) The amount of the penalty imposed for a fraudulent failure described in subsection (a) is one hundred percent (100%) multiplied by:

- (1) the full amount of the tax, if the person failed to file a return; or
- (2) the amount of the tax that is not paid, if the person failed to pay the full amount of the tax.

(c) In addition to the civil penalty imposed under this section, a person who knowingly fails to file a return with the department or fails to pay the tax due under IC 6-6-5, IC 6-6-5.1, or IC 6-6-5.5 commits a Class A misdemeanor.

(d) The penalty imposed under this section is imposed in place of and not in addition to the penalty imposed under section 2.1 of this chapter.

As added by Acts 1980, P.L.61, SEC.1. Amended by P.L.26-1985, SEC.16; P.L.6-1987, SEC.14; P.L.335-1989(ss), SEC.24; P.L.1-1991, SEC.71; P.L.181-1999, SEC.8; P.L.131-2008, SEC.32.

IC 6-8.1-10-5

Faulty payment; penalty; required use of guaranteed funds

Sec. 5. (a) If a person makes a tax payment with a check, credit card, debit card, or electronic funds transfer, and the department is unable to obtain payment on the check, credit card, debit card, or electronic funds transfer for its full face amount when the check, credit card, debit card, or electronic funds transfer is presented for payment through normal banking channels, a penalty of ten percent (10%) of the unpaid tax or the value of the check, credit card, debit card, or electronic funds transfer, whichever is smaller, is imposed.

(b) When a penalty is imposed under subsection (a), the department shall notify the person by mail that the check, credit card, debit card, or electronic funds transfer was not honored and that the person has ten (10) days after the date the notice is mailed to pay the tax and the penalty either in cash, by certified check, or other guaranteed payment. If the person fails to make the payment within the ten (10) day period, the penalty is increased to one hundred percent (100%) multiplied by the value of the check, credit card, debit card, or electronic funds transfer, or the unpaid tax, whichever is smaller.

(c) If a person has been assessed a penalty under subsection (a) more than one (1) time, the department may require all future payments for all listed taxes to be remitted with guaranteed funds.

(d) If the person subject to the penalty under this section can show that there is reasonable cause for the check, credit card, debit card, or electronic funds transfer not being honored, the department may waive the penalty imposed under this section.

As added by Acts 1980, P.L.61, SEC.1. Amended by P.L.26-1985, SEC.17; P.L.18-1994, SEC.44; P.L.131-2008, SEC.33; P.L.182-2009(ss), SEC.259.

IC 6-8.1-10-6

Failure to file information return; penalty

Sec. 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.

As added by Acts 1980, P.L.61, SEC.1. Amended by P.L.18-1994, SEC.45.

IC 6-8.1-10-7

Maximum and minimum penalties

Sec. 7. Notwithstanding the various penalty provisions of this chapter, the maximum total penalty that may be assessed against a person under sections 2.1 through 5 of this chapter is one hundred percent (100%) of the unpaid tax and the minimum penalty, if any, that may be assessed under those sections is five dollars (\$5).

As added by Acts 1980, P.L.61, SEC.1. Amended by P.L.383-1987(ss), SEC.2; P.L.1-1991, SEC.72; P.L.71-1993, SEC.27.

IC 6-8.1-10-8

Repealed

(Repealed by P.L.107-1987, SEC.50.)

IC 6-8.1-10-9

Dissolution, liquidation, or withdrawal of corporation; notification; clearance

Sec. 9. (a) As used in this section:

- (1) "Dissolution" refers to dissolution of a corporation under IC 23-1-45 through IC 23-1-48, IC 23-17-23, or IC 23-17-24.

(2) "Liquidation" means the operation or act of winding up a corporation's affairs, when normal business activities have ceased, by settling its debts and realizing upon and distributing its assets.

(3) "Withdrawal" refers to the withdrawal of a foreign corporation from Indiana under IC 23-1-50 or IC 23-17-26.

(b) The officers and directors of a corporation effecting dissolution, liquidation, or withdrawal shall do the following:

(1) File all necessary tax returns in a timely manner as required by this title.

(2) Make all tax payments due or determined due to the department or a county treasurer in a timely manner as required by this title.

(3) File with the department a form of notification within thirty (30) days of the issuance of a certificate of dissolution, decree of dissolution, the adoption of a resolution or plan, or the filing of a statement of withdrawal. The form of notification shall be prescribed by the department and may require information concerning:

(A) the corporation's assets;

(B) the corporation's liabilities;

(C) details of the plan or resolution;

(D) the names and addresses of corporate officers, directors, and shareholders;

(E) a copy of the minutes of the shareholders' meeting at which the plan or resolution was formally adopted; and

(F) such other information as the department may require.

The department may accept, in lieu of its own form of notification, a copy of Form 966 that the corporation filed with the Internal Revenue Service.

(c) Unless a clearance is issued under subsection (g), for a period of one (1) year following the filing of the form of notification with the department, or the filing of all necessary tax returns as required by this title, including the final tax return, whichever is later, the corporate officers and directors remain personally liable, subject to IC 23-1-35-1(e) or IC 23-17, for any acts or omissions that result in the distribution of corporate assets in violation of the interests of the state or a political subdivision (as defined in IC 36-1-2-13). An officer or director held liable for an unlawful distribution under this subsection is entitled to contribution:

(1) from every other director who voted for or assented to the distribution, subject to IC 23-1-35-1(e) or IC 23-17; and

(2) from each shareholder for the amount the shareholder accepted.

(d) The corporation's officers' and directors' personal liability includes all taxes, penalties, interest, and fees associated with the collection of the liability due the department or the county. In addition to the penalties provided elsewhere in this title, a penalty of up to thirty percent (30%) of the unpaid tax may be imposed on the corporate officers and directors for failure to take reasonable steps

to set aside corporate assets to meet the liability due the department or the county.

(e) If the department or the county treasurer fails to begin a collection action against a corporate officer or director within the period prescribed by subsection (c), the personal liability of the corporate officer or director expires. The filing of a substantially blank form of notification or a form containing misrepresentation of material facts does not constitute filing a form of notification for the purpose of determining the period of personal liability of the officers and directors of the corporation.

(f) In addition to the remedies contained in this section, the department or county treasurer is entitled to pursue corporate assets that have been distributed to shareholders in violation of the interests of the state or political subdivision. The election to pursue one (1) remedy does not foreclose the state's or the county's option to pursue other legal remedies.

(g) The department may issue a clearance to a corporation effecting dissolution, liquidation, or withdrawal if:

- (1) the officers and directors of the corporation have met the requirements of subsections (b) through (c); and
- (2) request for the clearance is made in writing by the officers and directors of the corporation within thirty (30) days after the filing of the form of notification with the department.

(h) The issuance of a clearance by the department under subsection (g) releases the officers and directors from personal liability under this section.

(i) This section does not limit the liability of a responsible corporate officer for withheld income taxes or collected gross retail taxes.

As added by P.L.107-1987, SEC.1. Amended by P.L.73-1988, SEC.1; P.L.179-1991, SEC.11.

IC 6-8.1-10-11

Repealed

(Repealed by P.L.254-2003, SEC.14.)

IC 6-8.1-10-12

Additional penalty; failure to participate in amnesty program

Sec. 12. (a) This section applies to a penalty related to a tax liability to the extent that the:

- (1) tax liability is for a listed tax;
- (2) tax liability was due and payable, as determined under IC 6-8.1-3-17(d), for a tax period ending before July 1, 2004;
- (3) department establishes an amnesty program for the tax liability under IC 6-8.1-3-17(c);
- (4) individual or entity from which the tax liability is due was eligible to participate in the amnesty program described in subdivision (3); and
- (5) tax liability is not paid:

(A) in conformity with a payment program acceptable to the

department that provides for payment of the unpaid listed taxes in full in the manner and time established in a written payment program agreement entered into between the department and the taxpayer under IC 6-8.1-3-17(c); or

(B) if clause (A) does not apply, before the end of the amnesty period established by the department.

(b) Subject to subsection (c), if a penalty is imposed or otherwise calculated under any combination of:

- (1) IC 6-8.1-1-8;
- (2) section 2.1 of this chapter;
- (3) section 3 of this chapter;
- (4) section 4 of this chapter;
- (5) section 5 of this chapter;
- (6) section 6 of this chapter;
- (7) section 7 of this chapter;
- (8) section 9 of this chapter; or
- (9) IC 6-6;

an additional penalty is imposed under this section. The amount of the additional penalty imposed under this section is equal to the sum of the penalties imposed or otherwise calculated under the provisions listed in subdivisions (1) through (9).

(c) The additional penalty provided by subsection (b) does not apply if all of the following apply:

- (1) The department imposes a penalty on a taxpayer or otherwise calculates the penalty under the provisions described in subsection (b)(1) through (b)(9).
- (2) The taxpayer against whom the penalty is imposed:
 - (A) timely files an original tax appeal in the tax court under IC 6-8.1-5-1; and
 - (B) contests the department's imposition of the penalty or the tax on which the penalty is based.
- (3) The taxpayer meets all other jurisdictional requirements to initiate the original tax appeal.
- (4) Either the:
 - (A) tax court enjoins collection of the penalty or the tax on which the penalty is based under IC 33-26-6-2; or
 - (B) department consents to an injunction against collection of the penalty or tax without entry of an order by the tax court.

(d) The additional penalty provided by subsection (b) does not apply if the taxpayer:

- (1) has a legitimate hold on making the payment as a result of an audit, bankruptcy, protest, taxpayer advocate action, or another reason permitted by the department;
- (2) had established a payment plan with the department before May 12, 2005; or
- (3) verifies with reasonable particularity that is satisfactory to the commissioner that the taxpayer did not ever receive notice of the outstanding tax liability.

As added by P.L.236-2005, SEC.3. Amended by P.L.1-2009, SEC.59.

IC 6-8.1-10-13

Civil penalties for violations

Sec. 13. (a) A person that:

(1) obtains a permit, license plate, cab card, or any other credential issued by the registration center established under IC 6-8.1-4-4; and

(2) alters the permit, license plate, cab card, or other credential;
is subject to a civil penalty of five hundred dollars (\$500) for the first violation and one thousand dollars (\$1,000) for each subsequent violation.

(b) A person that:

(1) is required to obtain a permit, a license plate, a cab card, or other credential issued by the registration center established under IC 6-8.1-4-4; and

(2) operates without obtaining the required permit, license plate, cab card, or other credential;

is subject to a civil penalty of five thousand dollars (\$5,000) for each violation.

(c) A civil penalty imposed under this section:

(1) shall be deposited in the motor carrier regulation fund established by IC 8-2.1-23-1; and

(2) is in addition to any fines levied by a court.

As added by P.L.176-2006, SEC.7.