

**Letter of Findings: 03-20210075**  
**Withholding Tax Penalty**  
**For the Year 2021**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department agreed with Indiana Hospital that it provided sufficient evidence and explanation justifying an abatement of late filing penalties because it acted in a business-like manner and was not willfully neglectful.

**ISSUE**

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

**Authority:** IC § 6-3-4-8; IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer asks that the Department abate a ten-percent "late penalty" on the ground that Taxpayer acted reasonably and with good cause in failing to file its withholding tax in a timely manner.

**STATEMENT OF FACTS**

Taxpayer is an Indiana hospital. Taxpayer filed a withholding tax payment on June 2, 2021, some thirteen days late. The return had been due on May 20, 2021. The Indiana Department of Revenue ("Department") issued Taxpayer a proposed assessment of additional tax in the form of an approximately \$15,300 penalty.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

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

**ISSUE**

The issue is whether Taxpayer has met its burden of establishing that - given the circumstances - the Department should exercise its authority to abate the ten-percent late penalty assessed Taxpayer.

Taxpayer explains that its payroll and tax filing responsibilities are delegated to a two-person human relations department, that it was in the process of modernizing its computer payroll system, that it was responsible for training all of Taxpayer's employees in the use of this system, that it previously paid its withholding tax in a timely fashion, and that its one-time failure to timely pay the withholding tax was not due to deliberate negligence.

IC § 6-3-4-8(g) specifically provides the following:

The provisions of [IC 6-8.1](#) relating to additions to tax in case of delinquency and penalties shall apply to employers subject to the provisions of this section, and for these purposes any amount deducted or required to be deducted and remitted to the department under this section shall be considered to be the tax of the employer, and with respect to such amount the employer shall be considered the taxpayer. In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes, shall be personally liable for such taxes, penalties, and interest.

IC § 6-8.1-10-2.1 provides in part:

(a) Except as provided in [IC 6-3-4-12\(k\)](#) and [IC 6-3-4-13\(l\)](#), a person that:

- (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;

is subject to a penalty.

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10[percent]) 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. (*Emphasis added*).

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 an assessment of a penalty - is presumptively valid.

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.*

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." 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 . . . ."

The Department agrees that Taxpayer has met its burden of establishing that its failure to file and pay the withholding tax in a timely manner was not due to "willful neglect" and that Taxpayer has demonstrated that it "exercised ordinary business care" in filing the return.

### FINDING

Taxpayer's protest is sustained.

September 20, 2021

Posted: 11/24/2021 by Legislative Services Agency  
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