

**Letter of Findings: 10-0340**  
**Withholding Tax**  
**For the Years 2006–2008**

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**ISSUE**

**I. Withholding Tax – Imposition.**

**Authority:** IC § 6-8.1-5-1; IC § 6-3-4-8; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Longmire v. Indiana Dep't of State Revenue, 638 N.E.2d 894 (Ind. Tax Ct. 1994); 41 Am. Jur. 2d Independent Contractors § 1 (2009).

Taxpayer protests the imposition of withholding tax liabilities from 2006 through and including 2008.

**STATEMENT OF FACTS**

Taxpayer is an Indiana sole proprietor who operates a tree pruning and deforesting business. Taxpayer utilized individuals to work for his business on clearing land. Taxpayer paid those individuals wages in cash and firewood. Pursuant to an audit, the Indiana Department of Revenue ("Department") concluded that these individuals were Taxpayer's employees, because he had control over the individuals and their equipment. However, the Department discovered that Taxpayer did not issue W-2 forms to those individuals and withhold taxes on payments of their wages, and the Department concluded that Taxpayer should have done so. The Department assessed Taxpayer on withholding taxes, interest, and penalty. Taxpayer protested the assessment. A hearing was held. The Letter of Findings ensues.

**I. Withholding Tax – Imposition.**

**DISCUSSION**

The Department assessed Taxpayer withholding taxes based on Taxpayer's 1040 Federal Income Tax Returns, bank statements, and a handwritten worksheet showing jobs and labor. Taxpayer claimed that the individuals he utilized to assist him complete the pruning and deforesting jobs were independent contractors, not employees, so Taxpayer was not required to withhold taxes on the payment of wages.

All tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

IC § 6-3-4-8(a), in pertinent part, states:

[E]very employer making payments of wages subject to tax under this article, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, shall, at the time of payment of such wages, deduct and retain therefrom the amount prescribed in withholding instructions issued by the department. The department shall base its withholding instructions on the adjusted gross income tax rate for persons, on the total rates of any income taxes that the taxpayer is subject to under [IC 6-3.5](#), and on the total amount of exclusions the taxpayer is entitled to under [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#). However, the withholding instructions on the adjusted gross income of a nonresident alien (as defined in Section 7701 of the Internal Revenue Code) are to be based on applying not more than one (1) withholding exclusion, regardless of the total number of exclusions that [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#) permit the taxpayer to apply on the taxpayer's final return for the taxable year. Such employer making payments of any wages:

(1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount deducted from the individual's wages and paid over in compliance or intended compliance with this section; and

(2) shall make return of and payment to the department monthly of the amount of tax which under this article and [IC 6-3.5](#) the employer is required to withhold.

IC § 6-3-4-8(g) further provides:

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.

According to the American Jurisprudence, an "independent contractor is one who, in exercising an

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independent employment, contracts to do certain work according to his or her own methods, without being subject to the control of the employer, except as to the product or result of the work." 41 Am. Jur. 2d Independent Contractors § 1 (2009). The employment relationship determines whether an individual worker is an independent contractor or employee. Behavioral and financial controls are the crucial factors in determining whether an employer-employee relationship exists. An employer-employee relationship "exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished." Longmire v. Indiana Dep't of State Revenue, 638 N.E.2d 894, 897 (Ind. Tax Ct. 1994).

In the present case, Taxpayer provided a list of reasons why the individuals working for him were independent contractors, and not employees. Taxpayer also further claimed that he had issued 1099 forms to those individuals for 2006, 2007, and 2008, and had filed corresponding 1096 forms as well. However, Taxpayer did not provide copies of those individuals' 1099 forms for those years in question for each individual to substantiate its claim, nor was Taxpayer able to provide corresponding 1096 forms either. Taxpayer therefore failed to meet its burden of proof that those individuals were independent contractors.

**FINDING**

Taxpayer's protest is respectfully denied.

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