

Letter of Findings: 03-20100602
Withholding Tax
For the Years 2007, 2008, and 2009

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ISSUE

I. Withholding Tax – Imposition.

Authority: IC § 6-3-2-2; IC § 6-3-5-1; IC § 6-3-4-8; IC § 6-8.1-5-1.

The taxpayer protests the imposition of employee withholding tax on an employee.

STATEMENT OF FACTS

The taxpayer is a corporation with one location in Indiana. The taxpayer had one employee who worked at the Indiana location but who was an Illinois resident. For the years in question, the taxpayer withheld and remitted Illinois income tax on behalf of the employee. However, the taxpayer did not withhold Indiana income tax on behalf of the employee.

The Indiana Department of Revenue ("Department") audited the taxpayer for 2007, 2008, and 2009, and determined that the taxpayer should have withheld and remitted Indiana state and county individual income tax on behalf of the employee. The Department issued a proposed assessment for tax, interest, and penalties, which the taxpayer protested. The Department conducted an administrative hearing and this Letter of Findings results.

I. Withholding Tax – Imposition.

DISCUSSION

The taxpayer argues that it was not required to remit Indiana state and county income tax on behalf of the employee. In particular, the taxpayer notes it paid tax to Illinois, the employee's state of residence.

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." A proposed assessment is presumptively valid.

IC § 6-3-4-8(a) provides:

Except as provided in subsection (d) or (l), every 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:

In this case, the employee in question worked in Indiana. Under IC § 6-3-2-2(a)(4), the employee's compensation was subject to Indiana income tax. The compensation was subject to federal wage withholding; therefore, the compensation was subject to Indiana state and county tax withholding. While IC § 6-3-5-1 provides for reciprocity agreements with other states in which an employee who resides in another state and works in Indiana is not subject to Indiana state income tax, Illinois is not one of those states.

Even though the taxpayer has sought a refund of Illinois taxes withheld, the taxpayer's Illinois refund claim does not affect the Indiana tax assessment. The taxpayer has not otherwise provided sufficient legal or factual grounds to justify abatement of the proposed assessment.

FINDING

The taxpayer's protest is denied.

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