

DEPARTMENT OF STATE REVENUE

01-20110474.LOF

Letter of Findings Number 01-20110474
Responsible Officer
Withholding Tax
For Tax Period 2006-2011

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE**I. Withholding Tax –Responsible Officer Liability.**

Authority: IC § 6-3-4-8; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

The Taxpayer protests the assessment of corporate withholding taxes against him as a responsible officer.

STATEMENT OF FACTS

Formation and membership of an Indiana limited liability company (LLC) included the Taxpayer. The LLC did not remit the proper amount of withholding tax to Indiana for the tax period from 1999-2011. From 2006 through January 2011, the Indiana Department of Revenue (Department) assessed the outstanding corporate withholding tax, interest, and penalty against the Taxpayer personally. The Taxpayer protested the assessment and requested a hearing. The Department held an administrative hearing, and this Letter of Findings results. Additional facts will be provided as necessary.

I. Withholding Tax –Responsible Officer Liability.**DISCUSSION**

All tax assessments are prima facie evidence that the Department's claim for the 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).

The Department assessed the proposed withholding taxes against the Taxpayer pursuant to IC § 6-3-4-8(g), which provides that "[i]n 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."

Taxpayer admitted his membership with the LLC. However, Taxpayer asserted that he did not have any responsibilities in connection with the company, but rather that Taxpayer was a passive investor. Taxpayer further asserted, and provided documentation showing, acquisition of the LLC by another company in 2005. That acquisition severed Taxpayer's connection with the LLC. Taxpayer provided substantial documentation indicating that he was not responsible for the payment of corporate trust taxes during the 2006 through 2011 tax period.

FINDING

The Taxpayer's protest is sustained.

Posted: 02/29/2012 by Legislative Services Agency
An [html](#) version of this document.