

Letter of Findings: 03-20130399
County Withholding Tax
For the Years 2010 and 2011

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ISSUE

I. County Withholding Tax – Imposition.

Authority: IC § 6-3-4-8; IC § 6-8.1-5-1; [45 IAC 3.1-1-97](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012).

Taxpayer protests the assessment of county withholding tax on wages it paid to its employees for 2010 and 2011 tax years.

STATEMENT OF FACTS

Taxpayer operates a gas station/convenience store in Indiana and hires several employees. In 2012, the Indiana Department of Revenue ("Department") audited Taxpayer's records for the tax years 2010 and 2011. The audit determined that Taxpayer failed to withhold any county income tax on wages it paid to several employees. As a result, the Department assessed additional county withholding tax pursuant to IC § 6-3-4-8.

Taxpayer protested the assessment. A hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. County Withholding Tax – Imposition.

DISCUSSION

The Department assessed additional county withholding tax on the ground that Taxpayer failed to remit the withholding tax on the wages it paid to several employees. Taxpayer, to the contrary, claimed that it was not liable for the withholding tax because its employees paid the tax when they filed their individual income tax returns for the tax years at issue.

As a threshold issue, 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); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012).

IC § 6-3-4-8, in relevant part, states:

(a) Except as provided in subsection (d), 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:

(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.

(b) An employer shall pay taxes withheld under subsection (a) during a particular month to the department no later than thirty (30) days after the end of that month. However, in place of monthly reporting periods, the department may permit an employer to report and pay the tax for a calendar year reporting period, if the amount of all tax required to be withheld by the employer in the previous calendar year does not exceed one thousand dollars (\$1,000). An employer using a reporting period (other than a monthly reporting period) must file the employer's return and pay the tax for a reporting period no later than the last day of the month immediately following the close of the reporting period.

(c) For purposes of determining whether an employee is subject to taxation under [IC 6-3.5](#), an employer is entitled to rely on the statement of an employee as to the employee's county of residence as represented by

the statement of address in forms claiming exemptions for purposes of withholding, regardless of when the employee supplied the forms. Every employee shall notify the employee's employer within five (5) days after any change in the employee's county of residence.

(d) A county that makes payments of wages subject to tax under this article:

- (1) to a precinct election officer (as defined in [IC 3-5-2-40.1](#)); and
- (2) for the performance of the duties of the precinct election officer imposed by [IC 3](#) that are performed on election day;

is not required, at the time of payment of the wages, to deduct and retain from the wages the amount prescribed in withholding instructions issued by the department.

(e) Every employer shall, at the time of each payment made by the employer to the department, deliver to the department a return upon the form prescribed by the department showing:

- (1) the total amount of wages paid to the employer's employees;
- (2) the amount deducted therefrom in accordance with the provisions of the Internal Revenue Code;
- (3) the amount of adjusted gross income tax deducted therefrom in accordance with the provisions of this section;
- (4) the amount of income tax, if any, imposed under [IC 6-3.5](#) and deducted therefrom in accordance with this section; and
- (5) any other information the department may require.

Every employer making a declaration of withholding as provided in this section shall furnish the employer's employees annually, but not later than thirty (30) days after the end of the calendar year, a record of the total amount of adjusted gross income tax and the amount of each income tax, if any, imposed under [IC 6-3.5](#), withheld from the employees, on the forms prescribed by the department.

(f) All money deducted and withheld by an employer shall immediately upon such deduction be the money of the state, and every employer who deducts and retains any amount of money under the provisions of this article shall hold the same in trust for the state of Indiana and for payment thereof to the department in the manner and at the times provided in this article. Any employer may be required to post a surety bond in the sum the department determines to be appropriate to protect the state with respect to money withheld pursuant to this section.

(g) 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.

(h) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for the employee's taxable year which begins in such calendar year, and a return made by the employer under subsection (b) shall be accepted by the department as evidence in favor of the employee of the amount so deducted from the employee's wages. Where the total amount so deducted exceeds the amount of tax on the employee as computed under this article and [IC 6-3.5](#), the department shall, after examining the return or returns filed by the employee in accordance with this article and [IC 6-3.5](#), refund the amount of the excess deduction. However, under rules promulgated by the department, the excess or any part thereof may be applied to any taxes or other claim due from the taxpayer to the state of Indiana or any subdivision thereof. No refund shall be made to an employee who fails to file the employee's return or returns as required under this article and [IC 6-3.5](#) within two (2) years from the due date of the return or returns. In the event that the excess tax deducted is less than one dollar (\$1), no refund shall be made.

(i) **This section shall in no way relieve any taxpayer from the taxpayer's obligation of filing a return or returns at the time required under this article and [IC 6-3.5](#), and, should the amount withheld under the provisions of this section be insufficient to pay the total tax of such taxpayer, such unpaid tax shall be paid at the time prescribed by section 5 of this chapter. (Emphasis added).**

[45 IAC 3.1-1-97](#) also provides:

Withholding Agent's Returns and Reports to the Department. Employers who make payments of wages subject to the Adjusted Gross Income Tax Act, and who are required to withhold Federal taxes pursuant to the Internal Revenue Code (USC Title 26), are required to withhold from employees' wages Adjusted Gross and County Adjusted Gross Income Tax.

Withholding agents who are required to withhold Indiana Adjusted Gross Income Tax and County Adjusted Gross Income Tax (where applicable), shall make return of and payment to the Department monthly whenever the amount of tax due, for either County and State, exceeds an aggregate of \$50 per month with such payment due on the thirtieth (30th) day of the following month. Where the aggregate amount of tax due under the Adjusted Gross Income Tax or County Adjusted Gross Income Tax does not exceed \$50 per

month, payment and return of the amount of tax due shall be made quarterly, with such payment due on the last day of the month following the end of the quarter. The following criteria should be used:

- (1) A withholding agent who falls within the monthly reporting system, due to maintaining an aggregate of fifty dollars (\$50) per month, but who in any month thereafter may maintain an aggregate of less than fifty dollars (\$50) per month, should remit that lesser amount on a monthly basis so as to maintain the status of being on the monthly system.
- (2) A withholding agent who falls within the quarterly reporting system, due to not maintaining an aggregate of fifty dollars (\$50) per month, but who in any month thereafter does maintain an aggregate of fifty dollars (\$50) per month, should then, and thereafter, begin reporting and making returns on a monthly basis and thereby maintain the status of being on the monthly system.

EXAMPLES:

- (1) A withholding agent withheld \$45.00 state income tax and \$20.00 county income tax during July, 1978. Since the aggregate withheld exceeds \$50.00 per month the withholding agent falls within the monthly system and must submit the return and make payment for the month of July no later than August 30, 1978.
- (2) A withholding agent withheld \$30.00 state income tax and \$10.00 county income tax during July, 1978. Since the aggregate does not exceed \$50.00 per month the withholding agent must submit a return and make payment on a quarterly basis with such return and payment due on or before the last day of the month following the end of the quarter.

All amounts deducted and withheld by an employer shall immediately upon deduction become the money of the State. All employers who make a declaration of withholding must provide each employee annually, but not later than January 30, a statement on Form W-2 of the total amount of wages paid, and adjusted gross and county adjusted gross income tax withheld. **In the case of delinquency or nonpayment of withholding tax, the employer is liable for such tax, penalties, and interest. If the employer is a corporation or partnership, all officers, employees, or members under a duty to withhold and remit adjusted gross income tax are personally liable for such taxes, penalty, and interest.**

The withholding provisions of this Act apply to both resident and nonresident employers having employees resident and/or working in the state (except employees resident in states having reciprocal agreements with Indiana). (**Emphasis added**).

In this instance, Taxpayer claimed that it was not liable for the withholding tax because its employees reported and paid the county income tax when they filed their individual income tax returns for the 2010 and 2011 tax years. However, Taxpayer did not refer to any statute or regulation authority to support its claim.

As discussed above, Taxpayer bears the burden to prove that the Department's assessment is incorrect. Thus, given the totality of the circumstances, in the absence of other supporting documentation, the Department is not able to agree that Taxpayer met its burden of proof to demonstrate that the proposed assessment is wrong.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 11/27/2013 by Legislative Services Agency
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