DEPARTMENT OF STATE REVENUE

03-20140136.LOF

Letter of Findings Number: 03-20140136
Withholding Tax
For Tax Years 2010-12

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUE

I. Withholding Tax–Imposition.

Authority: IC § 6-3-4-8; IC § 6-8.1-5-1; IC § 6-8.1-5-4; Wendt LLP v. Indiana Dept. of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the imposition of withholding tax.

STATEMENT OF FACTS

Taxpayer is a gasoline and convenience store merchant. The Indiana Department of Revenue ("Department") conducted a withholding tax audit for the years 2010 through 2012. The audit resulted in the assessment of withholding tax, penalty, and interest for the years at issue. Taxpayer protested the proposed assessments of tax. An administrative hearing was conducted and this Letter of Findings results. Further facts will be presented as required.

I. Withholding Tax–Imposition.

DISCUSSION

Taxpayer protests the proposed assessment of withholding tax for the tax years 2010, 2011, and 2012. From Taxpayer's protest letter, it is unclear whether or not Taxpayer is also protesting the penalty and interest assessed (Taxpayer's protest letter states, "Taxpayer hereby protests the above tax liabilities . . . ."). Due to the lack of Taxpayer's records, the Department assessed Taxpayer withholding tax on a best information available ("BIA") basis. Taxpayer believes that the Department's BIA method does not properly reflect the Taxpayer's actual tax liability. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Withholding tax requirements for an employer are imposed under IC § 6-3-4-8(a). Regarding BIA's, IC § 6-8.1-5-1(b) states that:

> If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

The Department's Audit Report notes that "[t]hroughout the course of the audit, books and records were requested to verify the withholding tax liability of the taxpayer." The Audit Report states:

> Specifically, requested were the federal and state income tax returns, general ledgers, trial balances, chart of accounts, sales and purchase invoices, sales tax returns (Form ST-103MP), payroll journals, W-2 statements as well as all work papers necessary to aid in determining the tax liability for the taxpayer.

Taxpayer, per the Audit Report, "provided some of its fuel purchase invoices, manual sales summary reports . . . Indiana Hoosier Lottery Reports, W-2 statements for . . . 2010, 2011, and 2012 and copies of unfiled Indiana Metered Pump Sales and Use Tax Returns (Form ST-103MP)." Because of "the lack of books and records," the Auditor consulted "BizStats.com."

Pursuant to IC § 6-3-4-8(a) Taxpayer is subject to withholding tax requirements. Regarding the Department's BIA methodology, IC § 6-8.1-5-1(b) states:

> If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

Additionally, IC § 6-8.1-5-4(a) states:

> Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

As noted supra, throughout the audit process the Department requested the Taxpayer's books and records. The Taxpayer did not fully provide these and thus has not complied with IC § 6-8.1-5-4(a). Taxpayer's failure to maintain books and records directly led to the Department's BIA methodology under IC § 6-8.1-5-1(b).

Taxpayer protests the Department's BIA methodology, but Taxpayer did not provide any new documentation or additional analysis of the previously provided documentation. Taxpayer instead makes broad assertions (e.g., "Auditor based increased withholding tax on general comparison to relative wages shown on BizStats.com") without developing its position. As explained in the Department's letter setting the hearing, the protest process is a taxpayer's opportunity to clearly explain their protest and to provide relevant and cogent supporting documentation. Taxpayer has not presented a sufficiently developed argument for the Department to address. See Wendt LLP v. Indiana Dept. of State Revenue, 977 N.E.2d 480, 485 n.9 (Ind. Tax Ct. 2012) (stating in a footnote parenthetical "that poorly developed and non-cogent arguments are subject to waiver" by the Indiana Tax Court) (quoting Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010)). Taxpayer has not met the burden of proving the proposed assessments wrong, as required by IC § 6-8.1-5-1(c). Taxpayer also failed to develop any argument regarding the penalty and interest assessments, and thus Taxpayer is denied regarding those issues too.

FINDING

Taxpayer's protest is denied.

Posted: 10/29/2014 by Legislative Services Agency
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