

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2014-02 IND
October 1, 2014

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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

State and County Tax Withholding- Incentive Plan

A company ("Taxpayer") is seeking an opinion as to whether certain benefits are subject to Indiana state and county tax withholding.

Authority: [IC 6-3-2-2](#); [IC 6-3-4-8](#); [IC 6-3.5-6-1](#); [IC 6-3.5-6-20](#).

STATEMENT OF FACTS

Taxpayer provides the following facts regarding its request for a revenue ruling. Taxpayer, which is located in Indiana, is a bank. Taxpayer offers various annual bonus awards ("Awards") to certain employees based on certain goals in Taxpayer's operations ("Incentive Plans").

According to Taxpayer,

Due to regulatory requirements, the Incentive Plans provide for the bifurcated payment of any Awards that may be earned each year and the possibility of forfeiture of some or all of the Awards under certain circumstances. More specifically, one-half of an Award is payable in March of the year following the year of the Award ("Current Award") and the other half is deferred (the "Deferred Award") until the March that is three (3) years after the payment of the first half of the Current Award. In addition, the Incentive Plans provide for (i) the forfeiture of all or a portion of the Deferred Awards under certain circumstances, including if the performance goals are subsequently determined to have not been met due to a regulatory review of [Taxpayer] the realization of actual losses or other decreases in the measures of performance and termination of employment with [Taxpayer] and (ii) increases in the Deferred Awards if [Taxpayer] performs well during the deferral period.

For the period in question, Taxpayer had an employee ("Employee") who was an Indiana resident during 2010-2013. For purposes of discussion, it is assumed that:

1. Employee retired and established a domicile outside Indiana before January 1, 2014.
2. Employee will retain his current domicile until the end of 2017.
3. Employee's new state of domicile is not a state which has a reciprocal agreement with Indiana pursuant to [IC 6-3-5-1](#).
4. Employee will not have sufficient presence in Indiana to be considered an Indiana resident.
5. Employee will be paid a Current Award for 2013, along with Deferred Awards for 2010-2013, during 2014-2017.

DISCUSSION

Taxpayer requests that the department rule whether Taxpayer has a duty to withhold state income tax on payments to Employee. In addition, Taxpayer requests that the Department rule whether Taxpayer has a duty to withhold county income tax on payments to Employee. The issue is whether Taxpayer's payments to Employee are subject to withholding for state adjusted gross income tax purposes and for county income tax purposes.

A. State Income Tax

[IC 6-3-4-8](#)(a) provides in relevant part:

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\(a\)\(4\)](#).

[IC 6-3-2-2\(a\)](#) provides:

(a) With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

...

(4) compensation for labor or services rendered within this state; and

Employee's qualification for the Awards—both the Current Awards and the Deferred Awards—are the result of Employee's labor within this state. Accordingly, Employee's income represents "compensation for labor or services rendered within this state"; therefore, the Awards are Indiana-source income.

Under federal law, Taxpayer acknowledges that it is required to withhold on the Awards. Accordingly, under the terms of [IC 6-3-4-8\(a\)](#), Taxpayer is required to withhold state income taxes on the Awards.

B. County Income Tax

In addition to requiring state withholding, [IC 6-3-4-8\(a\)](#) provides that the withholding instructions followed by employers are based partly "on the total rates of any income taxes that the taxpayer is subject to under [IC 6-3.5](#)." The issue is whether Employee was subject to county income tax on the Awards.

Prior to Employee's move to Florida, Employee resided in and worked in a county that enacted the county option income tax. Indiana's county option income tax law [IC 6-3.5-6-1](#) provides:

"County taxpayer", as it relates to a particular county, means any individual:

(1) who resides in that county on the date specified in section 20 of this chapter; or

(2) who maintains the taxpayer's principal place of business or employment in that county on the date specified in section 20 of this chapter and who does not reside on that same date in another county in which the county option income tax, the county adjusted income tax, or the county economic development income tax is in effect.

Identical rules are in effect for other county income taxes under [IC 6-3.5-1.1-1](#) and [IC 6-3.5-7-3](#). It is necessary for Employee to meet only one of the tests to be considered a "county taxpayer."

The date specified in [IC 6-3.5-6-20](#) is January 1 of the calendar year.

Employee is a Florida resident on January 1 of each of the years in question. Therefore, Employee is not a resident of an Indiana county and does not meet the first "county taxpayer" test. Furthermore, Employee's principal place of business or employment as of January 1 of each of the years in question is in Florida. Therefore, Employee does not meet the second "county taxpayer" test. Thus, for county income tax purposes, Employee is not subject to tax and Taxpayer is not subject to county tax withholding on the Awards.

RULING

Taxpayer is subject to state income tax withholding on the Awards paid to Employee. Taxpayer is not subject to county income tax withholding on the Awards paid to Employee.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the department discovers, upon examination, that the fact situation of the

taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Posted: 10/29/2014 by Legislative Services Agency

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