

Letter of Findings: 03-20140373
Withholding Tax
For the Year 2011

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 - Partner's Distributive Shares.

Authority: IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Treas. Reg. § 301.7701-2(a); [45 IAC 3.1-1-107](#).

Taxpayer argues that the Department erred in assessing it withholding tax.

STATEMENT OF FACTS

Taxpayer is an Indiana manufacturing business. The Indiana Department of Revenue ("Department") conducted an audit of Taxpayer's business records and tax returns. The audit resulted in an assessment of withholding tax.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Withholding Tax - Partner's Distributive Shares.

DISCUSSION

The Department's audit found that Taxpayer "operates as a limited liability company and files partnership return IT-65 for income tax reporting basis." The Department's audit concluded:

The [T]axpayer failed to register and withhold Indiana adjusted gross income tax, on the one time annual distribution to the non-resident partner []. The [T]axpayer is required to withhold and remit such taxes pursuant to [45 IAC 3.1-1-107](#).

The Department assessed withholding tax based on its reliance on [45 IAC 3.1-1-107](#) which states in part as follows:

A partnership is required to withhold income taxes at the rates provided for under [IC 6-2.1](#), [IC 6-3](#), and [IC 6-3.5](#) on any nonresident partners distributive share of partnership income at the time the income is paid or credited to such partner

Taxpayer disagrees and states that, during May to September 2011, it was a "Single Member LLC owned wholly by [Investment Partner]" and that during that same period, its income was reportable by Investment Partner and not by itself.

In addition, Taxpayer points out that it did not add a second member until September 30, 2011. Taxpayer further points out that during October to December 2011, while it was filing as a partnership, it sustained a business loss and - as a result - "no withholding was required."

As a threshold issue, it is the Taxpayer's responsibility to establish that the withholding tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State

Taxpayer submitted copies of the relevant 2011 federal income tax returns. The returns substantiate its argument that during May to September 2011, it was a single member LLC owned by its "Investment Partner" which is itself organized as a "partnership."

Treas. Reg. § 301.7701-2(a) defines "business entities" in relevant part as follows:

For purposes of this section and § 301.7701-3, a business entity is any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under §301.7701-3) that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code. A business entity with two or more members is classified for federal tax purposes as either a corporation or a partnership. A business entity with only one owner is classified as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner.

During the period May to September 2011, Taxpayer was a "disregarded" entity and any withholding or income tax liability would have been the obligation of its Investment Partner.

FINDING

Taxpayer's protest is sustained.

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