

DEPARTMENT OF STATE REVENUE

03-20140532.LOF

Letter of Findings Number: 03-20140532
Withholding Tax
For Tax Years 2011-13

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Employer was unable to provide documentation to support its position that it was not responsible for collecting and remitting county withholding tax. The Department's proposed assessments for county withholding tax were correct.

ISSUES

I. County Withholding Tax—Adjustments.

Authority: IC § 6-8.1-5-1; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); 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); [45 IAC 3.1-1-97](#).

Taxpayer protests the amount of proposed county withholding tax.

II. Tax Administration—Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

STATEMENT OF FACTS

Taxpayer is a business with operations in Indiana and other states. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not collected and remitted county withholding tax from some of its employees with Indiana addresses during the tax years 2011, 2012, and 2013. The Department therefore issued proposed assessments for county income tax, penalty, and interest for those years. Taxpayer protested those proposed assessments and penalty. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. County Withholding Tax—Adjustments.

DISCUSSION

Taxpayer protests the imposition of county withholding tax for the tax years 2011, 2012, and 2013. The Department conducted a withholding tax audit for those years and determined that Taxpayer had not collected and remitted the county withholding tax for some of its employees who had Indiana addresses for those years. Taxpayer states that, because some of its employees come into Indiana on a temporary basis, the Indiana addresses were not the permanent addresses for a portion of those employees and that it was therefore not required to withhold county income tax for those individuals. Taxpayer also states that the individuals must have reported the tax on their individual returns if they were indeed Indiana residents.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing 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 Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a

statute that an agency is 'charged with enforcing. . .[courts] defer to an agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

The relevant regulation is [45 IAC 3.1-1-97](#), which states in part:

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.

Therefore, employers such as Taxpayer are required to withhold adjusted gross and county adjusted gross income tax from payments of wages made to its Indiana employees.

Taxpayer protests that the Indiana addresses of the employees in question were not those employees' permanent addresses. Therefore, Taxpayer argues, county withholding was not required for those employees. Taxpayer was not able to provide documentation supporting its position that the employees in question had permanent addresses outside Indiana. Neither was Taxpayer able to provide any documentation supporting its position that the individuals paid the tax on their individual returns. Therefore, Taxpayer has not met the burden imposed by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Penalty.

DISCUSSION

Taxpayer protests the imposition of negligence penalties for the tax years 2011, 2012, and 2013. Taxpayer asks for an abatement of the penalty assessed against it on the grounds that it would have adjusted its methods immediately if it had known the proper procedures. 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).

The Department refers to IC § 6-8.1-10-2.1(d), which states:

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.
(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2\(b\)](#), which states:

"Negligence", on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.
(Emphasis added).

Finally, [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

(Emphasis added).

Taxpayer protests the Department's assessment of penalties. After review of the documentation and analysis provided in the protest process, the Department may not waive penalty as provided by [45 IAC 15-11-2\(c\)](#). IC § 6-8.1-10-2.1 requires a taxpayer to show that failure to remit taxes in a timely manner is due to reasonable cause. The county withholding tax and its proper collection and remittance requirements are a standard Indiana tax which Taxpayer should have known about. Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

FINDING

Taxpayer's protest is denied.

SUMMARY

Taxpayer's protest on Issue I regarding the imposition of withholding tax is denied. Taxpayer's protest on Issue II regarding the imposition of penalty is denied.

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