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DEPARTMENT OF STATE REVENUE

03-20140650.LOF

Letter of Findings Number: 03-20140650
Withholding Income Tax
For Tax Year 2011

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

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HOLDING

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The LLC did not provide enough documentation to affirmatively establish that it was compliant in reporting withholding income to the state. The imposition of penalty was appropriate.

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ISSUE

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I. Withholding Income Tax–Penalty.

Authority: IC § 6-8.1-5-1; IC 6-8.1-10-2.1; IC § 6-3-4-12; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the negligence penalty on the amount of tax that should have been withheld.

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STATEMENT OF FACTS

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Taxpayer is an Indiana Limited Liability Company ("LLC"). The Indiana Department of Revenue ("Department") audited Taxpayer for withholding tax for the tax year 2011, 2012, and 2013. The Department determined that Taxpayer had failed to withhold and remit the tax due for the non-resident members of the LLC for 2011. The Department assessed a penalty for failure to withhold income tax on nonresident shareholders. Taxpayer protested the assessments of penalty. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as needed.

I. Withholding Income Tax–Penalty.

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DISCUSSION

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Taxpayer protests the Department's proposed assessment of penalty for failure to remit withholding tax for the tax year 2011. The audit reviewed the federal and state tax returns for 2011, 2012, and 2013. The Department discovered that a composite IT-65 was not filed for the tax year 2011. In 2012 and 2013 composite tax returns were filed. Taxpayer failed to remit withholding tax in the amount of $7,162.00 on a non-resident member. Taxpayer claims that a non-resident member filed an individual return for the year in question, reporting the allocable income and paying individual income tax due on the income which included a withholding amount. Taxpayer disagrees that the penalty is due since the individual nonresident shareholder already paid the equivalent of the withholding tax on his individual adjusted gross income tax return.

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 Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. 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 the 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 Department references IC § 6-3-2-2.8(2) which states in relevant part:

> Any corporation which is exempt from income tax under Section 1363 of the Internal Revenue Code and which complies with the requirements of IC 6-3-4-13. However, income of a corporation described under this subdivision that is subject to income tax under the Internal Revenue Code is subject to the tax under IC 6-3-1 through IC 6-3-7. A corporation will not lose its exemption under this section because it fails to comply with IC 6-3-4-13 but it will be subject to the penalties provided by IC 6-8.1-10.

For the penalty imposed the Department refers to IC § 6-8.1-10-2.1(h) which states:

> A:
> (1) corporation which otherwise qualifies under IC 6-3-2-2.8(2);
> (2) partnership; or
> (3) trust;
>
> that fails to withhold and pay any amount of tax required to be withheld under IC 6-3-4-12, IC 6-3-4-13, or IC 6-3-4-15 shall pay a penalty equal to twenty percent (20[percent]) of the amount of tax required to be withheld under IC 6-3-4-12, IC 6-3-4-13, or IC 6-3-4-15. This penalty shall be in addition to any penalty imposed by section 6 of this chapter.

Taxpayer was required to withhold and remit all applicable taxes due to the state, which in this case was $7,162.00. Taxpayer protests that its member remitted the appropriate amount of Indiana adjusted gross income tax on his individual return. The Department disagrees with this conclusion.

The Department notes that the penalty provided by IC § 6-3-2-2.8(2) and IC § 6-8.1-10-2.1(h) is imposed on the amount which was required to be withheld, not on the amount which was or was not remitted or by whom. In the instant case, Taxpayer failed to withhold $7,162.00. Therefore, a twenty percent penalty of $1,432.00 is appropriate. Taxpayer was not able to show that it withheld the proper amount. Thus, the Taxpayer has not met its burden under 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

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