

Letter of Findings Number: 03-20150441
Withholding Tax
For Tax Year 2013

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Sole proprietor/individual failed to provide supporting documentation and was responsible for the withholding tax because he was statutorily required to deduct and retain from wages.

ISSUE

I. Withholding Tax - Imposition - Burden of Proof.

Authority: IC § 6-8.1-5-1; IC § 6-3-4-8; 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); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012), IC § 6-8.1-52 (g).

Taxpayer protests the Department's proposed assessments.

STATEMENT OF FACTS

Taxpayer is a sheet metal fabricator and retailer. In 2015, the Indiana Department of Revenue ("Department") conducted an audit of the W-2, Wage and Tax Statement forms for all of the Taxpayer's employees. Pursuant to the audit, the Department determined that additional state withholding tax was due and Taxpayer failed to withhold the County local tax on all employees. As a result, the Audit assessed Taxpayer the additional withholding tax and county local tax on all wages paid to their employees for 2013.

Taxpayer protested the assessment regarding withholding tax. A phone hearing was held for which Taxpayer explained the basis for the protest and provided additional tax information. This Letter of Findings addresses Taxpayer's protest based on the information available to the Department. Additional facts will be provided as necessary.

I. Withholding Tax - Imposition - Burden of Proof.

DISCUSSION

The Department assessed additional tax pursuant to the audit. Taxpayer disagreed.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

The Department refers to IC § 6-3-4-8(a), which provides:

Except as provided in subsection (d) or (l), 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\(a\)\(4\)](#). However, the withholding instructions on the adjusted gross income of a nonresident alien (as defined in Section 7701 of the Internal Revenue Code) are to be based on applying not more than one (1) withholding exclusion, regardless of the total number of exclusions that [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#) permit the taxpayer to apply on the taxpayer's final return for the taxable year. Such employer making payments of any wages:

(1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount deducted from the individual's wages and paid over in compliance or intended compliance with this section; and

(2) shall make return of and payment to the department monthly of the amount of tax which under this article and [IC 6-3.5](#) the employer is required to withhold.

The Department also refers to IC § 6-8.1-5-2 (g), which provides:

If any part of a listed tax has been erroneously refunded by the department, the erroneous refund may be recovered through the assessment procedures established in this chapter. An assessment issued for an erroneous refund must be issued:

(1) within two (2) years after making the refund; or

(2) within five (5) years after making the refund if the refund was induced by fraud or misrepresentation.

Thus, the issue is whether Taxpayer met his burden of proof to demonstrate that the proposed assessment is not correct.

The audit noted that:

When reconciling the amount of state and local county tax reported on the monthly WH-1 returns to the amounts withheld on the W2's, the auditor found additional state withholding tax due in addition to the County Local tax. The taxpayer has employees who are residents and non-residents of Indiana and failed to withhold the Indiana Local County taxes for 2013 on these employees. The taxpayer is located in the State of Indiana and all employees earn wages while performing their work in the State of Indiana. The taxpayer erroneously filed a refund claim for the 2013 Withholding in the amount of \$14,451.53. This amount was refunded in error and is not due to the taxpayer. Therefore, the amount is being assessed in the audit.

During the Hearing, Taxpayer stated that an employee incorrectly filed a withholding return and paid an amount higher than what was actually due and requested a refund. Taxpayer provided another withholding return, however based upon the amounts listed on the submitted withholding return, Taxpayer would actually have a higher tax liability. Additionally, Taxpayer neglected to mention that the Department issued a refund to Taxpayer, which the Auditor determined was issued in error.

Given the totality of the circumstances, in the absence of other supporting documentation, the Department is not able to agree that Taxpayer met his burden of proof to demonstrate the proposed assessment is wrong.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 12/28/2016 by Legislative Services Agency
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