

**Letter of Findings Number: 03-20150514**  
**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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 as prescribed in the withholding instructions issued by the department.

### **ISSUE**

#### **I. Sales/Use 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).

Taxpayer protests the Department's proposed assessments.

### **STATEMENT OF FACTS**

Taxpayer is a sole proprietor who is in the business of selling furniture. 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 Taxpayer failed to withhold the County income tax on all employees. As a result, the Audit assessed Taxpayer the county income tax on all wages paid to their employees for 2013.

Taxpayer protested the assessment regarding withholding tax. A phone hearing was held May 2016 for which Taxpayer explained the basis for his protest, provided his tax information, and also requested additional time to submit additional supporting documentation. The Department allowed Taxpayer additional time to provide additional documentation. The Department then followed up with the Taxpayer regarding the submission of the additional tax information. As of July 27, 2016, neither Taxpayer nor his representative submitted additional supporting documentation. This Letter of Findings addresses Taxpayer's protest based on the information available to the Department. Additional facts will be provided as necessary.

#### **I. Sales/Use 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.

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

The audit noted that:

The Taxpayer failed to withhold county income tax on all employees. This audit assess the county income tax on all wages paid to their employees for the year 2013. This adjustment is made in accordance with IC § 6-3-4-8. . .

During the Hearing, Taxpayer stated that his employees paid the withholding tax on an individual basis. Taxpayer provided his IT40 and CT40 on the date of the Hearing, but Taxpayer did not provide the tax information for each employee, showing that they all paid withholding taxes.

As of July 27, 2016, neither Taxpayer nor his representative had presented any supporting documentation.

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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