

**Supplemental Final Order Denying Refund: 03-20160582R**  
**Use Tax**  
**For Tax Year 2015**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

**HOLDING**

Company failed to provide sufficient documentation to show that it was timely in its response to Department's proposed assessment and demand notice.

**ISSUE**

**I. Withholding - Collection Fees.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4; P/S, Inc. v. Ind. Dep't of State Revenue, 853 N.E.2d 1051 (Ind. Tax Ct. 2006).

Taxpayer protests the partial denial of its claim for refund.

**STATEMENT OF FACTS**

Taxpayer is a retail merchant operating outside Indiana, but has some Indiana employees. Taxpayer also has two accounts with the Department for withholding tax, one for residents and one for non-residents. Taxpayer did not withhold income tax for its Indiana employees and remit the withheld tax to the state. The Indiana Department of Revenue ("Department") issued a "best information available" assessment (the "BIA Assessment") for the estimated withholding tax due. Taxpayer did not protest the BIA Assessment. As a result of Taxpayer's lack of a protest and failure to file an actual withholding return, the BIA Assessment advanced to a "demand notice" which required Taxpayer to pay the tax due within ten days. Taxpayer did not pay at that time and the liability eventually became to a tax warrant for the amount due.

At that point, Taxpayer paid the assessment including base tax, interest, penalty, and collection fees. Taxpayer filed a refund claim for the collection fees it paid, in addition to the tax, penalties, and interest paid. The Department granted a refund of \$7,358.98, representing overstatement of the tax (after the Department adjusted Taxpayer's account), penalties, and interest, but denied the \$1,447.54 portion representing the collection fees. Taxpayer protests the partial denial of its claim for refund. An administrative hearing was held, in which Taxpayer failed to appear. Taxpayer requested a rehearing and this Supplemental Order results. Additional facts will be provided as necessary.

**I. Withholding - Collection Fees.**

**DISCUSSION**

Taxpayer protests the Department's partial refund denial. Taxpayer maintains that the Department received the proper amount of tax due and that there was just confusion as to which account the money was being remitted. Taxpayer claims it is entitled to the full refund of the amounts levied by the Department's collection agency. The issue is whether the partial refund denial was proper.

If the Department reasonably believes that a taxpayer has not reported the proper amount of tax due, the Department shall propose an assessment of unpaid tax based on the best information available to the Department. IC § 6-8.1-5-1(b). The amount of the proposed assessment "is considered a tax payment not made by the due date" and is subject to penalties and interest. Id. Notice of the proposed assessment shall be sent to the taxpayer stating that it has sixty (60) days in which to pay the assessment or file a written protest. IC § 6-8.1-5-1(b) and (d). If the taxpayer does not pay the proposed assessment or file a written protest in the sixty

(60) day period "[t]he department shall demand payment, as provided in [IC 6-8.1-8-2\(a\)](#), of any part of the proposed tax assessment, interest, and penalties . . . ." IC § 6-8.1-5-1(j). In these situations, the Department "shall make the demand for payment in the manner provided in [IC 6-8.1-8-2](#)." IC § 6-8.1-5-1(k).

IC § 6-8.1-8-2 provides that the Department must issue a demand notice for payment which grants the taxpayer a ten (10) day period of time in which to "either pay the amount demanded or show reasonable cause for not paying the amount demanded." IC § 6-8.1-8-2(a). If a taxpayer "does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs," and other fees. IC § 6-8.1-8-2(b). When it has issued a tax warrant, the Department may contract with a collection agency to collect delinquent tax plus interest, penalties, collection fees, and other fees and costs. IC § 6-8.1-8-4(a). Additionally, "a collection fee of ten percent (10 percent) of the unpaid tax is added to the total amount due." *Id.* When a tax warrant is filed, "the total amount of the tax warrant becomes a judgment against the person owing the tax." IC § 6-8.1-8-2(e).

In this case, the liability advanced through the legally required procedures. Taxpayer failed to properly file and remit withholding tax. The Department issued the proposed assessment on July 28, 2015. Taxpayer did not contact the Department until November 2, 2015. The Department placed a 30 day hold on the account to prevent any collection activity for 30 days. Taxpayer however did not contact the Department again until December 29, 2015 to determine how to close one of its withholding accounts. On January 3, 2016, Taxpayer then filed a BC-100 to close one of its withholding accounts.

The Department incurred fees based on a valid Department assessment that advanced to a tax warrant. The fees collected are deemed properly collected if the fees were based on the information available to the Department at the time the fees were collected. The fact that Taxpayer later provided information that resolved the issues does not redeem the collection fees. Had Taxpayer acted sooner, as required by law, these fees would not have been incurred in the first place. Additionally, the collection fees were not retained by the Department, and therefore, in the absence of Department error, the Department is not able to refund the collection fees.

In *P/S, Inc. v. Ind. Dep't of State Revenue*, the tax court concluded that the taxpayer was responsible for paying collection fees because it had not rebutted the presumption that it received the notices which the Department mailed. *P/S, Inc. v. Ind. Dep't of State Revenue*, 853 N.E.2d 1051, 1054-55 (Ind. Tax Ct. 2006). The court ruled, "when an administrative agency sends notice through the regular course of mail, a presumption arises that such notice is received." *Id.* at 1054. The court further explained that the taxpayer in that case merely asserted that it had not received notice and that the Department had explained that the notices had not come back to the Department as returned mail. *Id.*

In this case, the Department followed the correct procedure regarding its collection process. In addition the Department also stayed the collection process for 30 days to allow Taxpayer the opportunity to resolve the issue. The Department has determined that it neither erred in following the proper procedure, nor in failing to give Taxpayer proper notice. Taxpayer's protest is respectfully denied.

#### **FINDING**

Taxpayer's protest of the partial refund denial by the Department is denied.

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