

**Letter of Findings Number: 03-20170092**  
**Withholding Tax**  
**For Tax Years 2013-15**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Business did not prove that the Department's calculations of withholding tax which should have been remitted were incorrect. Therefore, the Department's proposed assessments for withholding tax were proper.

**ISSUE**

**I. Withholding Tax—Calculations.**

**Authority:** IC § 6-8.1-5-1; IC § 6-3-4-8; *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); [45 IAC 3.1-1-97](#).

Taxpayer protests proposed assessments for additional withholding tax.

**STATEMENT OF FACTS**

Taxpayer is an Indiana business. Taxpayer filed state and county withholding tax returns. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer did not accurately withhold county withholding tax for tax years 2013, 2014, and 2015 ("Tax Years"). The Department therefore issued proposed assessments for county withholding tax for those years. Taxpayer protested a portion of the proposed assessments. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

**I. Withholding Tax—Calculations.**

**DISCUSSION**

Taxpayer protests the calculation of the Department's proposed assessments of county withholding tax for the Tax Years. The Department based its determinations on the best information available to it. Taxpayer states, "[t]he auditor calculated withholding without consideration for IN-W4s, or whether the employee was a resident of Indiana at the beginning of each year, and thus charged the maximum rate on all gross wages." As a result, Taxpayer made a payment to the Department that was less than the outstanding assessment and asks the Department to waive the remainder of the outstanding assessment.

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.

First, 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.  
(*Emphasis added*).

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 county adjusted gross income tax from payments of wages made to its Indiana employees.

Next, the Department refers to IC § 6-8.1-5-1(b), which states:

*If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department.* The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.  
(*Emphasis added*).

Thus, if the Department reasonably believes that a Taxpayer has not paid the proper amount of tax, the Department shall make an assessment of the unpaid tax on the basis of the best information available. Moreover, the Department's assessments are *prima facie* correct until proven otherwise. Also, Taxpayer is liable to the Department and shall not be liable to any individual for the amount deducted from the individual's wages and paid over in compliance.

Taxpayer states "[their] position is that money withheld from employees should be the employees' money; and [proposed assessment payments] to the Indiana Department of Revenue results in 'double taxation.'" IC § 6-3-4-8(a)(1) states employers "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." The withholding tax is collected by the employer from the employees' wages. In accordance with IC § 6-3-4-8(a)(1), Taxpayer is liable to the Department for the outstanding balance for unpaid tax.

Taxpayer contends that "[t]he auditor calculated withholding without [t] consideration for IN-W4s, or whether the employee was a resident at the beginning of each year, and thus charged the maximum rate on all gross wages." Pursuant to IC § 6-8.1-5-1(c), "[t]he burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Taxpayer provided no further support of its position. Without support of Taxpayer's position, the Department is unable to infer that the assessments are incorrect. Therefore, Taxpayer has failed to meet its burden in proving the *prima facie* assessments as invalid.

Finally, Taxpayer asks the Department to "consider [the aforementioned arguments] and accept [Taxpayer's] settlement offer." Taxpayer paid an amount equal to the amount of the proposed assessments which it did not

protest. The Department did not issue penalties for the outstanding assessments. Therefore, the Department has already acknowledged Taxpayer's good faith attempts to comply with its withholding duties. Taxpayer still owes the Department the outstanding balance after the Department has already taken measures to alleviate Taxpayer's liability for the miscalculations of withholding tax for the Tax Years.

In conclusion, Taxpayer is liable to the Department for unpaid tax and it is Taxpayer's burden to prove the proposed assessments wrong, as established by IC § 6-8.1-5-1(c). Taxpayer has not met that burden. Additionally, the Department alleviated Taxpayer's burden by waiving the imposition of penalties upon the outstanding assessments.

### **FINDING**

Taxpayer's protest is denied.

*Posted: 11/29/2017 by Legislative Services Agency*  
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