

Final Order Denying Refund Number: 03-20170958R
Withholding Tax
For The Tax Periods September 1, 2016 through November 30, 2016

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Out-of-state Company was not entitled to a refund of the withholding tax because it failed to substantiate its claim.

ISSUE

I. Withholding Tax - Refund Claimed by Employer.

Authority: IC § 6-8.1-9-1; [45 IAC 15-9-2](#).

Taxpayer protests the refund denial of withholding tax which it remitted in 2016.

STATEMENT OF FACTS

Taxpayer, an out-of-state company, provides title services both in Indiana and other states. Taxpayer employed several individuals who resided in Indiana and is required to withhold and remit income tax on wages it pays its employees.

In 2016, Taxpayer failed to timely file the withholding returns and remit taxes which it withheld accordingly. In early 2017, the Indiana Department of Revenue ("Department") issued several proposed assessments based on the best information available then (the "BIA Assessments") for the tax periods from September 1, 2016 through November 30, 2016 (the "Tax Period at Issue"). Upon receiving the BIA Assessments, Taxpayer filed the required withholding returns electronically and remitted the taxes due through the Department's INTax. Nonetheless, Taxpayer only remitted the payments of tax when it filed the actual returns without payments of penalty and statutory interest. The Department thus issued separate proposed assessments for the remaining balance outstanding. Taxpayer eventually paid the assessments.

In late 2017, Taxpayer filed a refund claim, GA-110L form (Claim Number 1618181), stating that it was entitled to a full refund of the payments for the Tax Periods at Issue. Upon review, the Department denied Taxpayer's refund claim.

Taxpayer protested the refund denial. An administrative phone hearing was held. Taxpayer requested for additional time to provide supporting documentation, but it failed to provide any documentation. This Decision results. Further facts will be provided as necessary.

I. Withholding Tax - Refund Claimed by Employer.

DISCUSSION

The Department reviewed and denied Taxpayer's refund claim. The Department explains in relevant part:

No overpayment exists in the account. (Emphasis in original).

Taxpayer, to the contrary, argued that it overpaid the tax because it did "not have an office in Indiana." Taxpayer contended that it has "paid withholding tax based on an erroneous filing that was inadvertently made by our previous bookkeeper."

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund if the taxpayer determines that the taxpayer has paid more tax than the amount is legally due for a particular taxable period. To obtain the refund, the taxpayer is required to file the claim with the Department within three (3) years from the date of payment if that

date is later than the due date of the return. "The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund." *Id.* See also [45 IAC 15-9-2](#). In this instance, Taxpayer timely filed the refund claim concerning the withholding tax it paid in 2017. Therefore, the issue is whether Taxpayer, as an employer, was entitled to a refund of withholding taxes which were remitted to the Department pursuant to Taxpayer's untimely actual returns.

Although Taxpayer requested additional time to submit additional supporting documentation to support its protest, it failed to do so as the Department finalizes this Decision. As a result, this Decision addresses Taxpayer's protest based on the documentation within the protest file.

In this instance, Taxpayer claimed that it overpaid the taxes. Upon review, however, the Department is not able to agree that Taxpayer demonstrated that it was entitled to any refund because there was no overpayment. Specifically, the Department's records showed that (1) Taxpayer filed the actual returns and remitted the payments untimely; (2) Taxpayer paid insufficient amount (namely, Taxpayer did not pay penalty and interest) when it did file the untimely actual returns; and (3) Taxpayer did not have any overpayments. Moreover, Taxpayer in this instance did not amend its W-2 statements nor did it amend its returns for the Tax Periods at Issue. Without properly amended returns to demonstrate otherwise, the Department is not able to agree that there is an overpayment.

Finally, Taxpayer argued that it did not have an office in Indiana and was not required to withhold Indiana withholding taxes. Taxpayer is mistaken. Specifically, public verifiable information showed that Taxpayer has been doing business in Indiana and Taxpayer has filed actual Indiana withholding returns and remitted Indiana tax for years. Taxpayer did not provide any supporting documentation to substantiate that it did not have any Indiana employees regardless of whether it has an Indiana office. Taxpayer also did not file the required BC-100 form (Indiana Business Tax Closure Request) to properly notify the Department, request the Department to close Taxpayer's withholding account, and to be released from the trust tax obligation. Thus, Taxpayer is required to file the required returns as well as withhold and remit the taxes.

In short, given the totality of the circumstances, *in the absence of other verifiable supporting documents*, Taxpayer was not entitled to any refund and its claim was properly denied.

FINDING

Taxpayer's protest is respectfully denied.

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