

DEPARTMENT OF STATE REVENUE

01-20171252.LOF

**Letter of Findings Number: 01-20171252
Individual Income Tax
For Tax Year 2013**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 requires the publication of this document in the Indiana Register. The 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 This document is effective on its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.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

Individual Employee owed additional Indiana individual income tax based upon her amended return reporting her income as employee wages as opposed to self-employment income.

ISSUE**I. Individual Income Tax - Independent Contractors/Employees.**

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); [45 IAC 3.1-1-97](#).

Taxpayer protests imposition of income tax based upon the Internal Revenue Service's determination that she was an employee and not an independent contractor.

STATEMENT OF FACTS

Taxpayer is an individual employed in the state of Indiana. Taxpayer worked as outpatient therapist for an Indiana group practice ("Employer"). For several years, Employer treated Taxpayer and other therapists as independent contractors and therefore did not withhold and remit payroll taxes to the Internal Revenue Service ("IRS") and the Indiana Department of Revenue ("Department"). In 2016, Taxpayer filed a Form SS-8 *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, requesting a determination from the IRS that she was an employee and not an independent contractor of Employer. The IRS made a final determination that Taxpayer was an employee. The determination was also affirmed after a request for reconsideration. Taxpayer subsequently filed an amended Indiana individual income tax return for tax year 2013. The Department issued Taxpayer a proposed assessment for additional tax due. Taxpayer protests this proposed assessment. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Individual Income Tax - Independent Contractors/Employees.**DISCUSSION**

Taxpayer filed an amended individual income tax return for tax year 2013 as a result of an IRS final determination that she was an employee of Employer, not an independent contractor. On the amended return, Taxpayer's income was reported as employee wages rather than self-employment income. This amendment resulted in additional tax, penalty, and interest due, all of which were reported on the amended return. However, Taxpayer protests that she should not be liable for these additional amounts, that Employer should be liable for the additional tax, penalty and interest, and that she is entitled to a refund from the Department.

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 Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't 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.

IC § 6-3-4-8(a) provides that employers must "withhold, collect, and pay over income tax on wages paid to . . . employee[s]." The relevant regulation [45 IAC 3.1-1-97](#), states that employers must "withhold [F]ederal taxes pursuant to the Internal Revenue Code", and are also "required to withhold from employees' wages Adjusted Gross and County Adjusted Gross Income Tax." Additionally, IC § 6-3-4-8(h)-(i) provides:

(h) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for the employee's taxable year which begins in such calendar year, and a return made by the employer under subsection (b) shall be accepted by the department as evidence in favor of the employee of the amount so deducted from the employee's wages. Where the total amount so deducted exceeds the amount of tax on the employee as computed under this article and [IC 6-3.6](#), the department shall, after examining the return or returns filed by the employee in accordance with this article and [IC 6-3.6](#), refund the amount of the excess deduction

(i) This section shall in no way relieve any taxpayer from the taxpayer's obligation of filing a return or returns at the time required under this article and [IC 6-3.6](#), and, should the amount withheld under the provisions of this section be insufficient to pay the total tax of such taxpayer, such unpaid tax shall be paid at the time prescribed by section 5 of this chapter.

In the instant case, there is no factual dispute as to whether the IRS properly determined that Taxpayer was an employee. Rather, Taxpayer asserted that she is owed a *refund* of \$422.00 from the Department, based upon a summary provided to her by her tax preparer. This request for refund conflicts with Taxpayer's amended return, which states that she owes an additional \$620.00. During the protest process, Taxpayer was provided additional time within which to provide documentation explaining why she should be entitled to a refund from the Department; however, as of the date of this decision no such documentation or explanation was provided. The payroll taxes that Employer failed to withhold from Taxpayer's income would have been considered to be "in part payment of the tax imposed on such *employee* for the *employee's* taxable year." IC § 6-3-4-8(h) (*emphasis added*). Employer's failure to withhold these taxes from Taxpayer's income does not therefore relieve Taxpayer of her state and local income tax obligations, and Taxpayer cites to no state statute providing relief from this tax liability.

The burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as required by IC § 6-8.1-5-1(c). In this case, Taxpayer has not shown that the proposed assessment, based upon her amended return, was incorrect and has not provided a basis upon which she should be entitled to a refund. Therefore, Taxpayer has not met the burden of proving the proposed assessments wrong.

FINDING

Taxpayer's protest is respectfully denied.

March 29, 2018

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