

Final Order Denying Refund: 03-20170599
Withholding Tax
For the Years 2013 & 2014

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 is provided for the convenience of the reader and is not part of the analysis contained in this document.

HOLDING

Company failed to properly withhold county taxes; company's protest was denied.

ISSUE

I. Withholding Tax - Claim for Refund.

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

Taxpayer protests the Department's denial of its claim for refund.

STATEMENT OF FACTS

Taxpayer was initially audited by the Indiana Department of Revenue ("Department") for withholding taxes for 2013 and 2014, which resulted in a proposed assessment. Taxpayer's protest of the audit, per a Department letter dated June 13, 2016, was not timely. Taxpayer paid the proposed assessments and then filed a Claim for Refund (GA-110L) with the Indiana Department of Revenue ("Department") for the years 2013 and 2014. Taxpayer's refund claim was denied by the Department in a letter dated June 28, 2017. Taxpayer filed a protest of the refund denial with the Department. An administrative telephone hearing was held and this written ruling results.

I. Withholding Tax - Claim for Refund.

DISCUSSION

Taxpayer is a business located in Indiana. The county that Taxpayer is in, Lake County, adopted a county income tax in 2013. Taxpayer failed to withhold the county income taxes in 2013 and in 2014 Taxpayer failed to withhold county income tax for one employee.

The relevant law, IC § 6-3-4-8, states in part:

[E]very 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.
(Emphasis added)

[45 IAC 3.1-1-97](#) further explains in relevant 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.

Taxpayer's argument appears to be that Taxpayer withheld too much tax for state income tax purposes, and withheld too little tax for county tax purposes. Additionally, in correspondence to the Department, Taxpayer's representative stated that its single shareholder is the "100[percent] owner of the company" and that "county and state taxes were paid in full" on the owner's individual Indiana income tax returns (from the correspondence, dated in October of 2016, Taxpayer apparently provided a copy of those returns to the Department).

Taxpayer's argument confuses withholding tax types: Taxpayer states it over withheld for state income tax purposes and that the Department should have used that "surplus" to "offset" county taxes that were under withheld; Taxpayer also confuses the company with the single shareholder. The statute and regulation create a withholding requirement for the employer— IC § 6-3-4-8 states "shall" and [45 IAC 3.1-1-97](#) states "required." The employer in this instance is the company (i.e., Taxpayer). The Department correctly assessed the company. Taxpayer's protest is denied.

FINDING

Taxpayer's protest is denied.

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