

**Letter of Findings Number: 03-20170913
Withholding Tax
For Tax Years 2014-16**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 § 6-3-4-1; IC § 6-3-4-8; IC § 6-8.1-5-1; IC § 6-8.1-7-1; *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); *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); [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 state and county withholding tax for tax years 2014, 2015, and 2016 ("Tax Years"). The Department therefore issued proposed assessments for state and 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 state and county withholding tax for the Tax Years. The Department based its determinations on the best information available to it. Taxpayer states that it cannot explain why there is a discrepancy in the amounts of state and county withholding taxes which it did withhold and which it should have withheld. Taxpayer argues, however, that it does not understand how the Department can assess these taxes against it when the employees in question must have paid the income tax on their individual returns.

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 state and 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. 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 states that it finds it unconscionable for the Department to assess these withholding taxes against it when the Department will not give corresponding credit to the employees. Also, Taxpayer states that the lack of withholding should have been brought to its attention by the employees at the time the omission occurred. The Department reiterates that IC § 6-3-4-8(a)(1) and [45 IAC 3.1-1-97](#) clearly provide that such withholding duties fall upon the employer, not the employee. Further, the Department refers to IC § 6-3-4-1, which states:

Returns with respect to taxes imposed by this act shall be made by the following:

(1) *Every resident individual having for the taxable year gross income in an amount greater than the modifications provided under [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#).*

- (2) Every nonresident individual having for the taxable year any gross income from sources within the state of Indiana, except for a team member (as defined in [IC 6-3-2-2.7](#)) who is covered by a composite return filed under [IC 6-3-2-2.7](#).
- (3) Every corporation having for the taxable year any gross income from sources within the state of Indiana.
- (4) For taxable years beginning after December 31, 2012, every resident estate having for the taxable year any gross income from sources within the state of Indiana exceeding the amount provided in Section 6012(a)(3) of the Internal Revenue Code.
- (5) For taxable years beginning after December 31, 2012, every resident trust having for the taxable year any gross income from sources within the state of Indiana exceeding the amount provided in Section 6012(a)(4) of the Internal Revenue Code.
- (6) For taxable years beginning after December 31, 2012, every nonresident estate having for the taxable year any gross income from sources within the state of Indiana exceeding the amount provided in Section 6012(a)(3) of the Internal Revenue Code.
- (7) For taxable years beginning after December 31, 2012, every nonresident trust having for the taxable year any gross income from sources within the state of Indiana exceeding the amount provided in Section 6012(a)(4) of the Internal Revenue Code.

(Emphasis added).

Therefore, returns are required to be filed by individuals who meet the criteria listed under IC § 6-3-4-1(1). In other words, not everyone who earns any income is required to file a return. Only those who meet the criteria of IC § 6-3-4-1(1) are required to do so. Taxpayer has made no effort to explain, let alone provide sufficient documentation to establish, that the employees in question met the criteria listed under IC § 6-3-4-1(1). Thus, there is no evidence that the employees did, in fact, file individual returns and pay income tax on the amounts paid to them by Taxpayer. Since IC § 6-3-4-8(a)(1) and [45 IAC 3.1-1-97](#) place these withholding duties squarely on employers, Taxpayer's position is unconvincing.

Regarding Taxpayer's statement that the Department will not give a corresponding credit to the employees in question, the Department notes that Taxpayer has provided no documentation confirming that the Department ever said such a thing. The Department takes this opportunity to inform Taxpayer that, while the Department is prohibited from sharing any taxpayer's information with other taxpayers by IC § 6-8.1-7-1, Taxpayer itself is free to share its tax payment history and documentation with anyone it sees fit to do so, including its employees and former employees. Those employees and former employees are also free to file any claim for refund they want to, pursuant to applicable statutes of limitations. Such refund claims would be evaluated on their own merits.

Finally, Taxpayer claims that it should receive some exemptions from the withholding amounts imposed and offers its own figures of what it believes is due. Taxpayer has not provided supporting documentation or analysis for these other amounts. Taxpayer has not presented a sufficiently developed argument for the Department to address. See *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480, 485 n.9, (Ind. Tax Ct. 2012) (stating in a footnote parenthetical "that poorly developed and non-cogent arguments are subject to waiver" by the Indiana Tax Court) (citing *Scopelite v. Indiana Dept. of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax. Ct. 2010)).

In conclusion, IC § 6-3-4-8(a)(1) and [45 IAC 3.1-1-97](#) place the withholding duties on Taxpayer. Taxpayer has not established that the lower amounts it claims as due are correct. 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. Taxpayer is free to share its income tax withholding records with whoever it sees fit.

FINDING

Taxpayer's protest is denied.
May 14, 2018

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