

DEPARTMENT OF STATE REVENUE

03-20180546R.ODR

**Final Order Denying Refund: 03-20180546R
Collection Fees
For Tax Years 2012, 2013, 2014, 2015, and 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 business was not entitled to refund of collection fees because it did not timely address the Indiana Department of Revenue's notices.

ISSUE

I. Tax Administration - Collection Fees.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-2; IC § 6-8.1-8-2; IC § 6-8.1-8-4; IC § 6-8.1-8-8; *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Ind. Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Wendt LLP v. Ind. Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Ind. Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Sq. Amoco, Inc. v. Ind. Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the partial refund denial, claiming it is entitled to the full refund.

STATEMENT OF FACTS

Taxpayer, an out-of-state company, employs individuals in Indiana. Taxpayer did not timely file the required returns and remit tax it withheld on wages paid to its Indiana employees for 2012, 2013, 2014, 2015, and 2016 tax years ("Tax Years at Issue"). The Indiana Department of Revenue ("Department"), based on the best information available to it, issued proposed assessments ("BIA" assessments) and subsequently demand notices to Taxpayer which eventually advanced to warrant collection stage and a third-party collection agency levied Taxpayer's bank account collecting the unpaid taxes on behalf of the Department.

In November 2017, Taxpayer filed the required actual returns for the Tax Years at Issue. Taxpayer also filed a Claim for Refund, GA-110L form, to request a refund concerning the amount taken from its bank account (Case Number 1664090). The Department reviewed the refund claim and granted Taxpayer a partial refund.

Taxpayer protested the partial refund. A telephonic administrative hearing was held and this Order Denying Refund results. Further facts will be supplied as necessary.

I. Tax Administration - Collection Fees.

DISCUSSION

The Department denied Taxpayer's refund in part, in the amount of \$8,406.47. In a letter, dated December 12, 2017, the Department explained that "[c]ollection fees are non-refundable."

Taxpayer, to the contrary, claimed that it was entitled to the full refund and the "collection source was unwarranted."

In this instance, Taxpayer's refund claim stemmed from the Department's proposed assessments. Thus, as a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*,

939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

IC § 6-8.1-5-1(b) 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.

IC § 6-8.1-5-1(d) outlines the taxpayer's right to protest and request a hearing within a statutory due date. IC § 6-8.1-5-1(j) and (k) further detail that the department shall demand payment after certain statutory requirements are met. See also IC § 6-8.1-8-2.

IC § 6-8.1-5-2(f) provides:

If a person files a fraudulent, unsigned, or **substantially blank return**, or if a person **does not file a return**, there is no time limit within which the department must issue its proposed assessment. (**Emphasis added**).

IC § 6-8.1-8-4 provides:

(a) When the department collects a judgment arising from a tax warrant, it may proceed in the same manner that any debt due the state is collected, except as provided in this chapter. The department may employ special counsel or contract with a collection agency for the collection of a delinquent tax plus interest, penalties, collection fees, sheriff's costs, clerk's costs, and reasonable fees established under subsection (b) if:

(1) an unsatisfied warrant has been issued by the department; or

(2) the department received a tax payment by check or other instrument drawn upon a financial institution, and the check or other instrument was not honored by that institution.

(b) The commissioner and the budget agency shall set the fee that the special counsel or collection agency will receive and payment of the fee shall be made after a claim for that fee has been approved by the department.

(c) The fees become due and owing by the taxpayer upon the filing of an amended warrant with the circuit court clerk adding the fee authorized by subsection (b) to the amount of the judgment lien under section 2 of this chapter.

IC § 6-8.1-8-8(1) further permits the Department to "levy upon the property of the taxpayer held by a financial institution" which does business within the State of Indiana.

In this instance, Taxpayer stated that it has been working with Indiana to comply with Indiana law for its Indiana-based employees since February 2017. Taxpayer thus contended that the Department erroneously levied Taxpayer's bank account and the tax levy was unwarranted. Taxpayer further offered a one-page summary timeline to support its protest.

Upon review, however, the Department is not able to agree. First, the Department in early 2017 determined that Taxpayer had not filed the required returns and not remitted Indiana income withholding tax for Indiana-based employees for the Tax Years at Issue. Pursuant to the best information available to the Department, it proposed to assess Taxpayer for those years in March 2017. Taxpayer however did not respond to the proposed assessments within 60 days as stated on the proposed assessments (AR-80s) and also required by statute. Because Taxpayer did not timely respond to the proposed assessments, subsequent notices were sent to Taxpayer to demand payments in June 2017. The demand notices allowed Taxpayer 20 days to make the payments. Both mailings were sent to the same address via the US Mail and the Department has fulfilled its statutory obligation.

Additionally, the Department's records noted that Taxpayer contacted the Department on June 22, 2017, and was instructed to file actual returns for the Tax Years at Issue. Taxpayer however failed to do so within the specified due date. Eventually, those notices advanced to warrants in August 2017 and the matter was turned over to a

third-party collection agency. Taxpayer filed the required actual returns only after the tax levy occurred. Pursuant to IC § 6-8.1-8-8(1), the Department is permitted to "levy upon the property of the taxpayer held by a financial institution." The Department's collection agency's employees in Indiana contacted the financial institution that does business in Indiana, the collection was deemed occurred in Indiana. Thus, Taxpayer had sufficient notice and the levy was proper.

Taxpayer did not timely file the required returns for the Tax Years at Issue, resulting in the BIA assessments and subsequent levy. The Department properly notified Taxpayer and instructed Taxpayer to file the actual returns within the specified due date to resolve the issue. The Department followed statutory procedures each step of the way. While the collection agency retained a portion of the money as a result of completing its collection effort, the Department had refunded Taxpayer the money which the Department received. The collection fees were not retained by the Department and, therefore, in the absence of Department error, the Department is not able to refund the collection fees.

FINDING

Taxpayer's protest is respectfully denied.

May 18, 2018

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