

Memorandum of Decision: 03-20171259
Withholding Tax
For the Year 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 is provided for the convenience of the reader and is not part of the analysis contained in this document.

HOLDING

Company did not timely inform the Department that it no longer had employees working in Indiana for withholding tax purposes. As a result of this failure the Department issued a proposed assessment for withholding taxes since the Department was unaware that the Company no longer had Indiana employees. Ultimately the Department's collection agency levied the Company's bank account. Company was not entitled to a refund of the collection fees since Company did not timely file the Department's Business Closure Form (BC-100), however Company was entitled to a refund for the other portion of the levy.

ISSUE

I. Withholding Tax - Claim for Refund.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

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

STATEMENT OF FACTS

Taxpayer filed a Claim for Refund (GA-110L) with the Indiana Department of Revenue ("Department") for withholding taxes for 2016. Taxpayer's refund claim was denied by the Department in a letter dated November 21, 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

At the outset the Department notes, "[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 shall be entitled to deference.

Regarding the protest, Taxpayer states that in 2014 it stopped doing business in Indiana. Taxpayer, in a letter filed on September 18, 2017 states:

In May, we received the notices of tax due for 2016 for 2 of our companies that ceased to do business in Indiana as of July 1, 2014. We were told that Form BC-100 needed to be filled out for both companies. We completed task as instructed and attached is proof of documents filed along with confirmation of receipt via fax. The BC-100 Forms were filled out for [Company B, Taxpayer] [] and [Company M] [].

For clarity, the Department notes that *only Company B is addressed in this written ruling* (the Claim for Refund form is for Company B, viz., Taxpayer). Returning to Taxpayer's correspondence, in a May 8, 2017 letter to the Department, Taxpayer states that since it continued "to operate in the State of Michigan, no dissolution documents exist, we just discontinued using an office in Indiana."

Thus there are a couple of issues within Taxpayer's protest: (1) the base tax (withholding tax); and (2) collection fees associated with the Department's collection agency's activities. Regarding the former, if the Department reasonably believes that a taxpayer has not reported the proper amount of tax due, the Department shall propose

an assessment of unpaid tax based on the best information available ("BIA") to the Department. IC § 6-8.1-5-1(b). The amount of the proposed assessment "is considered a tax payment not made by the due date" and is subject to penalties and interest. *Id.* Notice of the proposed assessment shall be sent to the taxpayer stating that it has sixty (60) days in which to pay the assessment or file a written protest. IC § 6-8.1-5-1(b) and (d). If the taxpayer does not pay the proposed assessment or file a written protest in the sixty (60) day period "[t]he department shall demand payment, as provided in [IC 6-8.1-8-2\(a\)](#), of any part of the proposed tax assessment, interest, and penalties" IC § 6-8.1-5-1(j). In these situations, the Department "shall make the demand for payment in the manner provided in [IC 6-8.1-8-2](#)." IC § 6-8.1-5-1(k).

IC § 6-8.1-8-2 provides that the Department must issue a demand notice for payment which grants the taxpayer a ten (10) day period of time in which to "either pay the amount demanded or show reasonable cause for not paying the amount demanded." IC § 6-8.1-8-2(a). If a taxpayer "does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs," and other fees. IC § 6-8.1-8-2(b). When it has issued a tax warrant, the Department may contract with a collection agency to collect delinquent tax plus interest, penalties, collection fees, and other fees and costs. IC § 6-8.1-8-4(a). Additionally, "a collection fee of ten percent (10 percent) of the unpaid tax is added to the total amount due." *Id.* When a tax warrant is filed, "the total amount of the tax warrant becomes a judgment against the person owing the tax." IC § 6-8.1-8-2(e).

Regarding the base tax, the Department has processed the Indiana Business Tax Closure form ("BC-100") that was filed by Taxpayer. Because of the filing of the BC-100, the "BIA" proposed assessment for withholding tax for 2016 has been corrected to reflect the updated information that there were no employees in Indiana for 2016. However, the issue of the collection fees remains and is addressed below.

According to Taxpayer's timeline provided in a December 8, 2017 letter to the Department, Taxpayer states that it "did fail to file form Business Closure Form (BC-100) in 2014 when operations ceased" Taxpayer eventually submitted in September of 2017 the BC-100, with Taxpayer stating that it "rectified" the matter "and received confirmation on September 12, 2017" (at the hearing Taxpayer indicated that the BC-100 also was submitted at an earlier date, but the Department's records do not reflect any such submission prior to September 2017). In the intervening time the Department's collection agency completed its levy of Taxpayer's bank account for the BIA proposed assessment.

Taxpayer, by its own admission, did not timely file the BC-100 form with the Department. Thus Taxpayer is responsible for the events that led up to the collection activity. Taxpayer's protest, as it relates to collection fees, is denied. However, Taxpayer will be refunded the portion of the levy related to the 2016 Indiana withholding taxes, less the aforementioned collection fees and also less any other outstanding Indiana taxes that Taxpayer may owe.

FINDING

Taxpayer's protest is partially sustained and partially denied. Regarding the latter, the portion of the protest relating to collection fees is denied. Taxpayer is sustained regarding the portion of the levy that related to the 2016 Indiana withholding taxes (minus the aforementioned collection fees and also less any other outstanding Indiana taxes that Taxpayer may owe).

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