

**Memorandum of Decision: 03-20181081R
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 of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

The Department agreed with Out-of-State Health Care Company that it was entitled to a refund of withholding tax but did not agree that Health Care Company was entitled to a return of the collection fees because it was Health Care Company's filing error which led to the Department's effort to collect this unpaid trust tax.

ISSUE

I. Withholding Tax - Overpayment Refund.

Authority: IC § 6-8.1-8-2(b); IC § 6-8.1-8-4.

Taxpayer argues it is entitled to a refund of withholding taxes and collection fees incurred by Taxpayer when it inadvertently filed incorrect withholding tax returns.

STATEMENT OF FACTS

Taxpayer is an out-of-state company which provides medical and rehabilitative, long-term hospital care. Taxpayer filed two March 2016 withholding returns reporting the withholding liability incurred at two different Indiana business locations.

The two different March 2016 withholding returns were incorrect. The withholding return for location one reported the liability for location two; the withholding return for location two reported the liability for location one. Taxpayer paid the liabilities correctly but - of course - because there was a mismatch as to the amounts owed - one of the accounts was underpaid.

The Indiana Department of Revenue ("Department") issued an assessment for what it perceived as an underpaid withholding liability. Some five months later, Taxpayer filed corrected withholding returns for both locations, but by then the Department had referred the matter to its collection agency.

The matter remained unresolved, and the Department's collection agency pressed Taxpayer for payment of approximately \$18,000 in unpaid trust taxes. Taxpayer paid the collection agency the \$18,000 in unpaid trust taxes along with approximately \$5,000 in accumulated collection fees.

Taxpayer thereafter sought a refund of the entire \$23,000. To that end, Taxpayer filed a form BC-100 (Indiana Business Tax Closure Request) because Taxpayer ceased doing business at one of its two Indiana locations. Taxpayer also submitted a form WH-3 (Annual Withholding Reconciliation Form).

The Department denied Taxpayer's refund request and instructed Taxpayer to file a GA-110L (Claim for Refund). Taxpayer protested the refund denial and, along with the protest submission, provided the earlier requested GA-110L.

An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest.

I. Withholding Tax - Overpayment Refund.

DISCUSSION

The issue is whether Taxpayer is entitled to a refund of the approximately \$23,000 in withholding tax and

collection fees.

The first part of the question is straightforward; Taxpayer has provided the paperwork necessary for the Department to establish Taxpayer's withholding liability, necessary to determine which of Taxpayers' Indiana location has closed, and has provided the WH-3 which reconciles the 2016 total withholding obligations. Taxpayer has established that it is entitled to the amount of withholding tax it overpaid the Department. However, that decision encompasses approximately \$18,000 of the amount paid to the Department's collection agency. Taxpayer believes it is also entitled to the collection fees.

IC § 6-8.1-8-2(b) provides the Department authority to impose collection fees and associated costs:

If the person 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 fees established under section 4(b) of this chapter when applicable. When the department issues a tax warrant, a collection fee of ten percent (10[percent]) of the unpaid tax is added to the total amount due.

IC § 6-8.1-8-4 provides the Department authority to engage a third party agency to assist in the collection of taxes which have proceeded, uncollected to the warrant stage along with the authority to imposed on the delinquent taxpayer a "fee" to compensate the agency for its efforts:

(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.

In this case, a review of the records provides no indication that the Department acted outside its statutory authority in its efforts to collect the amount of tax due as originally reported by the Taxpayer, that the Department ignored Taxpayer's efforts to correct the error, or that the Department acted precipitously when it directed the agency to take the steps it did. The collection agency acted correctly and is entitled to the fees it charged.

Taxpayer is entitled to the return of the excess withholding tax. However, between Taxpayer and the Department, the error is on the Taxpayer's side and it must bear the costs of the fees incurred by the collection agency.

FINDING

Taxpayer's protest is sustained in part and denied in part.

June 27, 2018

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