

Memorandum of Decision: 03-20181450
Withholding Tax
For Tax Year 2016

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Memorandum of Decision.

HOLDING

Business was unable to produce documentation and explanation to establish that it was entitled to a refund of collection fees. Therefore, the Department's initial denial of refund of these fees was correct.

ISSUE

I. Withholding Tax--Collection Fees.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-8-4; IC § 6-8.1-8-2; IC § 6-8.1-3-11; *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); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *P/S, Inc. v. Indiana Dept. of State Revenue*, 853 N.E.2d 1051 (Ind. Tax Ct. 2006); 45 IAC § 15-8-2.

Taxpayer protests the partial denial of refund.

STATEMENT OF FACTS

Taxpayer is an out-of-state business with Indiana operations. The Indiana Department of Revenue ("Department") reviewed Taxpayer's 2016 filings and determined that Taxpayer failed to file returns for withholding tax. The Department sent Taxpayer a proposed assessment based on the best information available ("BIA") from prior years' filings. When Taxpayer did not respond, the Department sent a demand notice. After receiving no response to the demand notice, the Department referred the outstanding bill to a collection agency. The collection agency levied Taxpayer's bank account for the full amount of tax due plus collections fees. Taxpayer then filed a business tax closure request form for the tax year in question. Taxpayer also filed a claim for refund of the full amount levied, including collections fees. The Department denied Taxpayer's claim in part by refunding base tax, penalty, and interest, but not the amount of collection fees. Taxpayer filed a protest for the denied amount of claimed refund. A hearing was held and this Memorandum of Discussion results. Further facts will be supplied as required.

I. Withholding Tax--Collection Fees.

DISCUSSION

Taxpayer protests the denial of its claim for refund of collection fees. The fees were incurred by the Department's collection agency when it acted to collect liabilities that had advanced to the warrant stage. Taxpayer argues that, since the base tax was determined to not be due and was refunded, the collection fees should be refunded as well.

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 the 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.

When the Department reasonably believes a taxpayer has failed to file or pay the proper amount of tax, the Department will issue a proposed assessment based on best information available ("BIA"). IC § 6-8.1-5-1. Under IC § 6-8.1-5-1(d):

The notice shall state that the person has forty-five (45) days from the date the notice is mailed, if the notice was mailed before January 1, 2011, and sixty (60) days from the date the notice is mailed, if the notice was mailed after December 31, 2010, to pay the assessment or to file a written protest. If the person files a protest and requires a hearing on the protest, the department shall:

- (1) set the hearing at the department's earliest convenient time; and*
 - (2) notify the person by United States mail of the time, date, and location of the hearing.*
- (Emphasis added.)*

If the taxpayer fails to respond properly within the sixty day window, the department will issue a demand notice for payment of a tax as well as penalties and interest. IC § 6-8.1-8-2.

As stated in IC § 6-8.1-8-2(a):

Except as provided in IC § 6-8.1-5-3, the department must issue a demand notice for the payment of a tax and any interest or penalties accrued on the tax, if a person files a tax return without including full payment of the tax or if the department, after ruling on a protest, finds that a person owes a tax before the department issues a tax warrant.

(Emphasis added.)

The Department will exercise its power to issue tax warrants and incur collection fees if Taxpayer fails to pay the assessment or show reasonable cause for not paying the amount demanded. Under IC § 6-8.1-8-2(b):

If the person does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the twenty (20) 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) [IC 6-8.1-8-4(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.

(Emphasis added.)

[45 IAC 15-8-2](#) also provides:

Any money received by the department pursuant to a demand notice or tax warrant shall be applied to the outstanding tax liability of the taxpayer in the manner provided by IC § 6-8.1-8-1.5. In this case, the tax liability of the taxpayer shall include any collection fee, sheriff's costs, clerk's costs, and damages.

IC § 6-8.1-8-4(a) outlines the means of collection available to the Department:

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.*
- (Emphasis added.)*

In this case, the Department determined that Taxpayer failed to file withholding tax and later issued a BIA proposed assessment to Taxpayer. Taxpayer failed to timely file the appropriate form to show no tax due for 2016 and did not respond to the Department's Proposed Assessment. When Taxpayer did not pay the assessment or file a protest within the sixty day window, the Department issued a Demand Notice, to which Taxpayer did not respond. The Department then issued a collection warrant.

As a consequence of the unsatisfied warrant, the Department employed a collection agent to levy Taxpayer's account for the amount due plus the collection fees. The collection agency levied Taxpayer's account, then Taxpayer filed a business closure form, an unsigned 2015 withholding return, and a claim for refund. Taxpayer

claimed that taxes were timely filed for 2016, and provided its 2015 WH-3 form, which had been edited by hand to reflect 2016 filing.

In this case, Taxpayer concedes that more than one of the Department's notices were in fact received. Taxpayer only responded to the Department after its account was levied. Taxpayer protested the partial denial of refund and requested that collection fees retained by the Department and Collection agency be returned. Taxpayer's case is similar to *P/S, Inc.*, in which the taxpayer failed to overcome the rebuttable presumption that notice was received to invalidate the tax warrant, but ultimately was entitled to a refund of a portion of collection fees due to an agreed upon accounting error. 853 N.E.2d 1051, 1055 (Ind. Tax Ct. 2006).

In conclusion, Taxpayer has not established that the Department's collection procedures were inadequate and that refund of the collection fees is warranted. Taxpayer's protest is denied on these grounds. As an administrative matter, upon review of Taxpayer's accounts it appears the Department's initial refund denial letter overstated the amount of collection fees withheld. Taxpayer will be refunded an additional \$85.

FINDING

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

July 31, 2018

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