

Memorandum of Decision: 03-20181152R
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

Indiana Property Management Company established that it was entitled to a refund of the withholding tax levied from Management Company's bank account because it established it was not liable for the original assessment.

ISSUE

I. Withholding Tax - Refund Request.

Authority: IC § 6-8.1-5-1(b); IC § 6-8.1-8-2(b); IC § 6-8.1-8-4; IC § 6-8.1-10-3.

Taxpayer argues that it is entitled to a refund of withholding tax assessed and collected by the Indiana Department of Revenue.

STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of managing real estate properties. Taxpayer formerly employed two individuals and filed withholding tax returns on their behalf. Taxpayer stopped filing withholding tax returns. The Indiana Department of Revenue ("Department") assessed Taxpayer additional withholding tax based on the "best information available" to the Department. To the end, the Department issued notices of "proposed assessment" and - eventually - "demand notices for payment."

Taxpayer objected explaining that it was no longer in business. To that end, Taxpayer submitted an "Indiana Business Tax Closure Request" (BC-100). The Department rejected the form and returned it to Taxpayer because the form was not notarized and because it was not accompanied by "proper documentation . . . proving the business is closed."

Because proposed assessments had advanced to the "demand" stage, the Department's collection agency took steps to collect the unpaid tax. A levy was placed on Taxpayer's bank account and, by virtue of that levy, the Department collected approximately \$1,700.

Taxpayer took steps to supply the missing documentation needed for the Department to take action on a supplemental BC-100. Taxpayer also filed missing withholding tax returns intended to establish that it did not owe the withholding taxes.

Taxpayer filed a "Claim for Refund" (GA-110L) requesting a return of approximately \$1,800. The Department responded in a letter dated January 2018. The Department's letter requesting "a copy of the front and back of the check or bank statements reflecting the amount requested on the claim for refund." According to the Department, Taxpayer failed to respond to the request and - in response to the GA-110L refund request - the Department issued a second letter February 2018 stating that "[t]he Department has reviewed the claim and hereby denies the claim in full based upon [this] reason"

The claim for refund did not include the information necessary for the Department to verify the claim. We contacted you January 30, 2018 advising that additional supporting documentation must be received by this office within twenty (20) days. We did not receive the additional documentation necessary to process the claim.

Taxpayer disagreed with the Department's decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. This Memorandum of Decision results.

I. Withholding Tax - Refund Request.

DISCUSSION

Taxpayer argues that it has provided sufficient information justifying a refund of the withholding tax amount and any costs associated with the Department's assessment.

When the Department determined that Taxpayer failed to file its withholding returns on behalf of its employee (or employees), Indiana law permitted and required the Department to issue assessments based on the "best information available."

IC § 6-8.1-5-1(b) provides in relevant part:

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*).

The Department issued the notices of proposed assessments for periods during which Taxpayer failed to file the requisite withholding returns. The Department did so under authority and under the requirements set out in IC § 6-8.1-10-3 which provides as follow:

If a person fails to file a return on or before the due date, the department shall send him a notice, by United States mail, stating that he has thirty (30) days from the date the notice is mailed to file the return. If the person does not file the return within the thirty (30) day period, the department may prepare a return for him, based on the best information available to the department. The department prepared return is *prima facie* correct.

When a proposed amount remains "unpaid," the Department adds a ten-percent penalty as provided for 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 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.

In addition, the Department is entitled to employ the services of a collection agent which - in turn - is entitled to impose penalties sufficient to compensate the collection agent for its own efforts. The statutory authority is found at IC § 6-8.1-8-4.

(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.

Because Taxpayer has provided the additional information requested during the protest process, the Department agrees that Taxpayer has established that it is entitled to a refund of any portion of the refund request attributable

to the withholding tax assessment. However, the remaining issue is whether - as between the Department and Taxpayer - who should be responsible for paying the collection fees incurred by the Department's agent. The Department is unable to agree that it is the Department which should incur these fees or that the fee amount should be refunded to Taxpayer. There is nothing to indicate that either the Department or its agent failed to follow the proper procedures in this matter. There is nothing to indicate that it was the Department or its agent's error which led to the efforts to collect the withholding tax amounts.

FINDING

Taxpayer's protest is sustained in part and denied in part. Taxpayer is entitled to a refund of withholding tax assessed on and levied from Taxpayer's bank account. Taxpayer's protest of any remaining amount is respectfully denied.

August 9, 2018

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