

**Final Order Denying Refund: 03-20181208R  
Withholding Tax  
For Tax Year 2015**

**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**

Business was not entitled to refund of collection fees, penalties and interest because it did not establish that either it or its representative timely responded to Department proposed assessments and demand notices.

**ISSUES**

**I. Tax Administration–Collection Fees.**

**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 partial denial of a claim for refund of collection fees.

**II. Tax Administration - Penalty and Interest.**

**Authority:** IC § 6-3-4-8; IC § 6-8.1-10-1; IC § 6-8.1-10-6; IC § 6-8.1-10-7.

Taxpayer protests the partial denial of a claim for refund of late filing penalty and interest.

**STATEMENT OF FACTS**

Taxpayer is an out-of-state company in the business of providing ambulance services. Taxpayer routinely files withholding tax returns with the Indiana Department of Revenue ("Department") reporting withholdings for its Indiana employees. Taxpayer utilizes a payroll services provider to file these returns.

For the tax year 2015, Taxpayer was required to file an annual withholding return (WH-1 Form) on or before the due date, February 1, 2016. Taxpayer failed to do so. As a result, the Department prepared a return on Taxpayer's behalf and issued Taxpayer a notice of proposed assessment based upon the best information available ("BIA") to the Department at that time in March 2016. Taxpayer did not respond to the Department's notice of the BIA assessment; a subsequent notice of demand for payment ("Demand Notice") was sent to Taxpayer in early June 2016. Taxpayer also failed to respond to the Department's "Demand Notice," which subsequently advanced to a tax warrant on June 22, 2016. A third-party collection agency ("Agency"), which was employed by the Department, collected the amount due, including tax, penalty, interest, and collection fees from Taxpayer's bank account in July 2016.

On January 25, 2018, Taxpayer filed a Claim for Refund (GA-110L Form) including the actual withholding tax return (WH-1 Form) for tax year 2015 (Claim Number 1757431). Taxpayer requested a refund of approximately \$2,450 after computing the amount of tax due plus penalty and interest pursuant to the actual filing of its 2015 WH-1 Form. On or about March 6, 2018, Taxpayer filed the statutorily required "Annual Withholding Reconciliation Form" (WH-3 Form) and included sixty-four W-2 Forms for 2015 to properly claim the refund. The Department subsequently granted a partial refund. The Department denied a portion of Taxpayer's refund request, stating that "[c]omputational error, withholding WH-3 reduced refund."

Taxpayer protested the partial refund denial requesting abatement of the collection fees, penalties and interest. An administrative hearing was held and this Final Order Denying Refund results. Further facts will be provided as necessary.

**I. Tax Administration–Collection Fees.**

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**DISCUSSION**

Taxpayer protests the Department's refund denial of collection fees. Taxpayer maintains that its failure to timely file its annual withholding tax return for tax year 2015 was due to the negligence of its payroll services provider, not Taxpayer. The issue is whether the denial of refund of collection fees was appropriate.

The Department notes that, "[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.

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 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 twenty (20) 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 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 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, 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 § 6-8.1-8-2(b). 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).

In this case, neither Taxpayer nor its payroll services provider responded to the Department's notices of the BIA proposed assessment and the Demand Notice. The Department was then statutorily authorized to issue a tax warrant. IC § 6-8.1-8-2(b) authorizes a collection fee of ten percent whenever the Department issues a tax warrant. In addition, IC § 6-8.1-8-4(a) and (b) authorize fees for collection agencies acting on the Department's behalf. The collection fees in question are the result of an assessment which advanced to a tax warrant stage. The collection fees are a statutorily allowed amount for collection on a tax warrant, even if the liability is later revised by filing the actual returns. Further, Taxpayer has not demonstrated that the Department acted improperly at any stage of the collections process and the Department does not refund collection fees unless the Taxpayer can prove that the Department was somehow at fault. Taxpayer failed to do so in this case.

Taxpayer argues that it should not be responsible for the collection fees because its payroll services provider was contractually obligated to timely file returns on its behalf. The Department views the taxpayer-payroll services provider relationship as a principal-agent relationship. As such, any action performed by the agent (payroll service provider) on behalf of the principal (Taxpayer) is binding on the principal (Taxpayer), which includes errors and omissions. Any action, or inaction, committed by a taxpayer's agent is binding on the taxpayer. In particular, Taxpayer has not provided any documentation from its payroll services provider demonstrating that it timely responded to the Department's notices on Taxpayer's behalf. Because of the contractual relationship between Taxpayer and its payroll services provider, any remedy Taxpayer has for reimbursement of fees incurred as result of the Department's collection actions lies with its payroll services provider, not the Department.

In this case the Department mailed multiple notices to the address on Taxpayer's account. Neither Taxpayer nor its payroll services provider responded to those notices. The Department followed statutory procedures each step of the way. Whether it was Taxpayer or payroll services provider, no one contacted the Department until after the collection fees had been incurred. The collection fees were not retained by the Department. Rather, the collection fees arose wholly due to Taxpayer's failure to respond in a timely manner to the Department's notices. The Department did refund a portion of the base tax based upon the amount reported on Taxpayer's 2015 withholding tax return. However, in the absence of Department error, the Department does not agree that it should bear the cost of the properly executed statutory collection procedures.

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**FINDING**

Taxpayer's protest with respect to the refund of collection fees is respectfully denied.

**II. Tax Administration - Penalty and Interest.****DISCUSSION**

Taxpayer requests that the penalties and interest to be refunded.

Taxpayer in this instance was required to file the WH-3 Form and the corresponding W-2 Forms (Wage and Tax Statements) for the tax year 2015 before February 1, 2016, pursuant to IC § 6-3-4-8(e) (effective July 1, 2015) (stating "the employer shall file Form WH-3 annual withholding tax reports with the department not later than thirty-one (31) days after the end of the calendar year). As a result, pursuant to IC § 6-3-4-8(g), the Department imposed late penalties and interest, which reduced the amount of Taxpayer's refund.

Under IC § 6-8.1-10-7, Taxpayer was assessed a five dollar (\$5) late penalty because it did not timely file the WH-3 return, which was due by February 1, 2016. In addition, pursuant to IC § 6-8.1-10-6, which provides for a ten dollar (\$10) penalty for each informational return submitted late. A form W-2 is an informational return within the scope of the statute.

IC § 6-8.1-10-6 states:

(a) As used in this section, "information return" means the following when a statute or rule requires the following to be filed with the department:

(1) Schedule K-1 of form IT-20S, IT-41, or IT-65.

(2) **Any form, statement, or schedule required to be filed with the department with respect to an amount from which tax is required to be deducted and withheld under [IC 6](#) or from which tax would be required to be deducted and withheld but for an exemption under [IC 6](#).**

(3) Any form, statement, or schedule required to be filed with the Internal Revenue Service under 26 CFR 301.6721-1(g) (1993). The term does not include form IT-20FIT, IT-20S, IT-20SC, IT-41, or IT-65.

**(b) If a person fails to file an information return required by the department, a penalty of ten dollars (\$10) for each failure to file a timely return, not to exceed twenty-five thousand dollars (\$25,000) in any one (1) calendar year, is imposed.**

(c) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return. **(Emphasis added).**

There is no statutory provision providing for waiver of the penalty. Taxpayer filed sixty-four W-2 forms with its WH-3 return and was properly assessed a penalty for each form that was filed late.

With respect to the interest imposed on Taxpayer's withholding tax liability, Indiana imposes interest on overdue tax pursuant to IC § 6-8.1-10-1(a), which states:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

IC § 6-8.1-10-1(e) further provides that the Department may not waive interest. Therefore, the Department is statutorily prohibited from waiving interest.

**FINDING**

Taxpayer's protest with respect to abatement of penalties and interest is denied.

**SUMMARY**

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Taxpayer's protest of the collection fees, penalties, and interest is respectfully denied.

August 9, 2018

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