

Supplemental Letter of Findings: 01-20181839
Individual Income Tax
For the Years 2015, 2016, and 2017

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Supplemental Letter of Findings.

HOLDING

On rehearing, the Department restated its decision that Out-of-State Individual was not entitled to claim the benefit of withholding taxes originally withheld by the Lottery Commission on behalf of a Servicing Corporation; Out-of-State Individual was required to return income tax refunds erroneously issued by the Department.

ISSUE

I. Individual Income Tax - Withholding Refund.

Authority: IC § 6-3-4-8.2(c); IC § 6-3-4-9; IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Letter of Findings 01-20181363 (June 15, 2018).

Taxpayer argues the Department's assessment of additional tax was incorrect because he was entitled to a refund of individual income tax purportedly withheld on his behalf.

STATEMENT OF FACTS

An Indiana resident won a million dollar prize from the Indiana Lottery. The million dollar prize was payable to the lottery winner in twenty annual payments. The Lottery winner petitioned the circuit court for permission to transfer the rights to these payments to an out-of-state company here designated as "Servicing Corporation" in exchange for receiving a lesser but more immediate payment of the lottery proceeds. The circuit court approved transfer of the rights to Servicing Corporation. After the transfer, the Lottery Commission proceeded to issue Servicing Corporation the original scheduled prize payments. The payments came in the form of checks issued by the Hoosier Lottery made payable to Servicing Corporation.

Servicing Corporation is in the business of buying and selling real estate receivables, structured settlement payments, annuity payments, and - as in the case of Indiana resident - structured lottery payments won by someone else.

Servicing Corporation in turn resold the rights to receive the Indiana Lottery payments to Taxpayer, an out-of-state individual. After the sale to Taxpayer, Servicing Corporation proceeded to issue Taxpayer annual payments representing Taxpayer's portion of the lottery proceeds. Those payments came in the form of checks issued by Servicing Corporation made payable to Taxpayer.

Taxpayer filed 2015, 2016, and 2017 Indiana income tax returns reporting the second-hand lottery payments. On those returns, Taxpayer claimed a credit for taxes he believed were withheld on his behalf by out-of-state Servicing Corporation. To that end, Taxpayer attached copies of form 1099-MISC ("Miscellaneous Income") issued by Servicing Corporation showing amounts of "state tax" ostensibly withheld on Taxpayer's behalf.

Servicing Corporation stated that it was entitled to issue Taxpayer the 1099-MISC forms because the Lottery Commission issued Servicing Corporation FORM W-2G ("Certain Gambling Winnings") showing "state income withheld" by the Lottery Commission on behalf of Servicing Corporation.

In response to Taxpayer's 2015, 2016, and 2017 Indiana tax returns, the Indiana Department of Revenue

("Department") issued Taxpayer refund checks based on tax amounts withheld on his behalf.

Subsequently, the Department issued Taxpayer proposed assessments of income tax on the ground that the amounts withheld on his behalf were not, in fact, actually withheld. In effect, the now disputed assessment represented the Department's efforts to recover the refund amounts issued Taxpayer. The Department attempted to recover the refunds because it had concluded that Servicing Corporation was not registered with the state and that Servicing Corporation had not set aside (withheld) any amount of money on Taxpayer's behalf.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer explained the basis for the protest. A Letter of Findings was issued June 15, 2018. Letter of Findings 01-20181363, 20180829 Ind. Reg. 045180340NRA, disagreed with Taxpayer's argument concluding that Taxpayer "was not entitled to claim the benefit of withholding taxes originally withheld by the Lottery Commission on behalf of Servicing Corporation." Taxpayer disagreed with the Department's decision set out in the June 2018 Letter of Findings and requested a rehearing. The rehearing was conducted during which Taxpayer argued that the Letter of Findings misstated the relevant facts. This Supplemental Letter of Findings results.

I. Individual Income Tax - Withholding Refund.

DISCUSSION

The issue is whether Taxpayer was entitled to claim the benefit of the withholding taxes originally withheld by the Lottery Commission on behalf of Servicing Corporation and that the Department's assessment of income tax is unjustified.

As in the previous Letter of Findings, Taxpayer's protest stems from the Department's assessment of individual income tax. As a threshold issue, all such tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "[E]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

IC § 6-3-4-8.2(c) provides as follows:

- (c) The adjusted gross income tax due on prize money or prizes:
 - (1) received from a winning lottery ticket purchased under [IC 4-30](#); and
 - (2) exceeding one thousand two hundred dollars (\$1,200) in value;shall be deducted and retained at the time and in the amount described in withholding instructions issued by the department, even if federal withholding is not required.

IC § 6-3-4-8.2(c) places on the Lottery Commission responsibility for deducting and retaining income tax due on a recipient's "prize money."

The Lottery Commission fulfilled its responsibility to do so and notified Servicing Corporation that it fulfilled that responsibility by issuing the W-2Gs naming Servicing Corporation as the "WINNER" and the Hoosier Lottery as the "PAYER."

IC § 6-3-4-9 imposes a second and separate withholding responsibility:

All individuals, corporations, limited liability companies, partnerships, fiduciaries, or associations, in whatever capacity acting, including but without being limited to, lessees or mortgagors of real or personal property, fiduciaries, and employers making payment to other persons of interest, rent, wages, salaries, premiums, annuities, compensation, remunerations, emoluments, other fixed or determinable means, profits and income, or corporate liquidation distributions shall make returns to the department setting forth the amount of such payments and the name and address of the recipient of such payment at such time or times in such manner, and on such forms as prescribed by the department.

As one of the entities enumerated in IC § 6-3-4-9, Servicing Corporation had a responsibility to withhold income taxes on behalf of Taxpayer who was the "recipient of such payment." Servicing Corporation ostensibly did so and issued Taxpayer the 1099-MISC forms naming Servicing Corporation as the "PAYER" and Taxpayer as the "RECIPIENT."

Taxpayer concludes that the withholding benefits "flows through" seamlessly from the Lottery Commission to Servicing Corporation and from Servicing Corporation to Taxpayer. Taxpayer explains that what the original lottery winner sold to Servicing Corporation was simply an "account number" and that what Servicing Corporation sold to Taxpayer was the one-and-the same "account number."

The Department is unable to agree with Taxpayer's explanation. Taxpayer's supporting documents demonstrate that Servicing Corporation and Taxpayer are separate PAYERS and separate RECIPIENTS. Whether Servicing Corporation, as the secondary recipient of lottery benefits, had a responsibility to file its own tax returns is an interesting question but need not be addressed here. What is clear is what Servicing Corporation indicated to Taxpayer - that it withheld income tax on behalf of Taxpayer - was incorrect; there are no records of Servicing Corporation having filed with the Department or ever withholding income tax on behalf of Taxpayer.

Taxpayer disagrees with the statement set out in the Letter of Findings explaining that Servicing Company was not "registered" with the state. Taxpayer is correct to a limited extent. Servicing Company *is* registered with the Indiana Secretary of State as an entity qualified to conduct business in this state. Nonetheless, Servicing Company is not registered with the Department of Revenue as a business which withholds income tax on behalf of its employees or other beneficiaries.

Taxpayer filed Indiana income tax returns establishing that Taxpayer owed Indiana individual income tax. In effect, Taxpayer attempted to "satisfy" that tax obligation by claiming that Servicing Company withheld income tax on his behalf. Taxpayer is wrong; Servicing Company did not withhold income tax on his behalf, and Taxpayer's income tax liability remains unsatisfied.

Taxpayer failed to meet its statutory obligation under IC § 6-8.1-5-1(c) of establishing that the Department's assessment was wrong. Taxpayer was not entitled to the income tax refund checks and must now return those amounts.

FINDING

Taxpayer's protest is respectfully denied.

September 24, 2018

Posted: 11/28/2018 by Legislative Services Agency
An [html](#) version of this document.