

**Letter of Findings: 03-20191174**  
**Withholding Tax**  
**For The Tax Year 2018**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

**HOLDING**

Company correctly withheld taxes for its Indiana employees.

**ISSUE**

**I. Tax Administration - Withholding Tax.**

**Authority:** IC § 6-8.1-5-1(c); IC § 6-3-4-8; *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*, 897 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the assessment for failing to pay withholding tax.

**STATEMENT OF FACTS**

Taxpayer is an Ohio Corporation that owns restaurants in Indiana through a related entity. The Indiana Department of Revenue ("Department") adjusted Taxpayer's returns and then assessed tax against Taxpayer for failing to pay withholding tax in Indiana for the last half of 2018. Taxpayer claimed that they opened two accounts with the Department; one for its Indiana entity, and the other was mistakenly opened for Taxpayer itself. Taxpayer protested the assessment. An administrative hearing was held and this Letter of Findings results. Additional facts will be provided as necessary.

**I. Tax Administration - Withholding Tax.**

**DISCUSSION**

Taxpayer protests the Department's assessment for failing to pay withholding tax for the last half of 2018. Taxpayer presented evidence that its Indiana entity had employees and its account paid the withholding tax at issue during the period in question. The other account was under Taxpayer's name even though and it had no employees in Indiana. After research and investigation the Department confirmed that was the case.

As a threshold issue, it is 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 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 shall be entitled to deference.

IC § 6-3-4-8(a) provides:

Except as provided in subsection (d), every employer making payments of wages subject to tax under this article, regardless of the place where such payment is made, who is required under the provisions of the

*Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, shall, at the time of payment of such wages, deduct and retain therefrom the amount prescribed in withholding instructions issued by the department.* The department shall base its withholding instructions on the adjusted gross income tax rate for persons, on the total local income tax rate that the taxpayer is subject to under [IC 6-3-6](#), and on the total amount of exclusions the taxpayer is entitled to under [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#). However, the withholding instructions on the adjusted gross income of a nonresident alien (as defined in Section 7701 of the Internal Revenue Code) are to be based on applying not more than one (1) withholding exclusion, regardless of the total number of exclusions that [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#) permit the taxpayer to apply on the taxpayer's final return for the taxable year. Such employer making payments of any wages:

(1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount deducted from the individual's wages and paid over in compliance or intended compliance with this section; and

(2) shall make return of and payment to the department monthly of the amount of tax which under this article and [IC 6-3-6](#) the employer is required to withhold.

*(Emphasis added).*

The Indiana related entity had Indiana employees and paid Indiana withholding tax as required by IC § 6-3-4-8. The Department confirmed that Taxpayer mistakenly opened an account, but the corporation had no Indiana employees and therefore no Indiana withholding tax was due. Taxpayer has met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

#### FINDING

Taxpayer's protest is sustained.

December 31, 2019

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