

DEPARTMENT OF STATE REVENUE

03-20191317R.ODR
04-20191316R.ODR**Final Order Denying Refund: 03-20191317R and 04-20191316R
Collection Fees
For Tax Years 2008, 2009, 2010, 2011, 2012, 2013, 2014, and 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

Out-of-state business was not entitled to refund of collection fees because it did not timely address the Indiana Department of Revenue's notices.

ISSUE**I. Tax Administration - Collection Fees.**

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-2; IC § 6-8.1-8-2; IC § 6-8.1-8-4; IC § 6-8.1-8-8; *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Ind. Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Wendt LLP v. Ind. Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Ind. Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Sq. Amoco, Inc. v. Ind. Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the partial refund denial, claiming it is entitled to the full refund.

STATEMENT OF FACTS

Taxpayer, an out-of-state company, conducted business in Indiana. Taxpayer did not timely file the required returns and remit tax it withheld on wages paid to its Indiana employees for 2008, 2009, 2010, 2011, 2012, 2013, 2014, and 2015 tax years ("Tax Years at Issue"). Taxpayer also did not timely file its sales tax returns for the Tax Years at Issue. The Indiana Department of Revenue ("Department"), based on the best information available to it, issued proposed assessments ("BIA" assessments) and subsequently demand notices to Taxpayer. Those liabilities eventually advanced to warrant collection stage and a third-party collection agency levied Taxpayer's bank account collecting the unpaid tax on behalf of the Department.

In July 2019, after its bank account was levied, Taxpayer contacted the Department and filed the required BC-100 form to close its sales tax and withholding tax accounts. Taxpayer also filed two separate GA-110L forms (Claim Numbers 2047381 and 2048502) requesting that the Department refund the amount taken from Taxpayer's bank account. The Department reviewed the refund claims, granting Taxpayer a partial refund.

Taxpayer protested the partial refund. On its "Protest Submission Forms," Taxpayer asked that the Department make the "Final determination without a hearing." The Department contacted Taxpayer by phone requesting additional supporting documentation. Taxpayer however did not provide the requested information. This Final Order Denying Refund results. Further facts will be supplied as necessary.

I. Tax Administration - Collection Fees.**DISCUSSION**

The Department, upon reviewing Taxpayer's request, refunded Taxpayer some but not all the amount requested. The Department explained that "[c]ollection fees are non-refundable." Taxpayer, to the contrary, claimed that it was entitled to the full refund.

In this instance, Taxpayer's refund claim stemmed from the Department's proposed assessments. Thus, as a threshold issue, all 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). 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). In reviewing a taxpayer's argument, the Indiana Supreme Court has held that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

IC § 6-8.1-5-1(b) states:

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.

IC § 6-8.1-5-1(d) outlines the taxpayer's right to protest and request a hearing within a statutory due date. IC § 6-8.1-5-1(j) and (k) further detail that the department shall demand payment after certain statutory requirements are met. See also IC § 6-8.1-8-2.

For tax years 2009 through 2015, IC § 6-8.1-5-2(f) provides:

If a person files a fraudulent, unsigned, or substantially blank return, or if a person **does not file a return**, there is no time limit within which the department must issue its proposed assessment. (**Emphasis added**). See also IC § 6-8.1-5-2(e) for tax year 2008.

IC § 6-8.1-8-4 provides:

(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.

IC § 6-8.1-8-8(1) further permits the Department to "levy upon the property of the taxpayer held by a financial institution" which does business within the State of Indiana.

In this instance, Taxpayer asserted that it was entitled to the full refund including the collection fees. In its September 11, 2019 protest letter, Taxpayer stated that it did not owe any taxes. Taxpayer further claimed that it was entitled to the full refund because "the collector never communicated with our official Statutory Agent [] who is registered with the Secretary of State for the State of Ohio." Taxpayer continued,

The fact that no communication occurred with our Statutory Agent left us unaware of this alleged tax. If the Statutory Agent had been notified [Taxpayer] would have promptly put an end to any additional collection activity that occurred.

Presumably, Taxpayer here claimed that it was entitled to the full refund because the Department failed to communicate with Taxpayer. However, Taxpayer's protest simply relied on its protest letter and did not provide any supporting documentation to support its above position.

Upon review, however, the Department is not able to agree. The Department's records show that, in January

2009, Taxpayer contacted the Department and updated its mailing address. Subsequently, Taxpayer stopped filing the required returns and remitted no sales/use tax and withholding tax for the Tax Years at Issue. Pursuant to the best information available at the time of the proposed assessments, the Department has been sending Taxpayer notices, including BIA assessments and demand for payment for the Tax Years at Issue. Taxpayer did not respond to the proposed assessments within 60 days as stated on the proposed assessments (AR-80s) and also required by statute. Because Taxpayer did not timely respond to the BIA assessments, subsequent notices were sent to Taxpayer to demand payments. The demand notices allowed Taxpayer 20 days to make the payments. The above-mentioned notices were sent to Taxpayer's address via the US Mail and were not returned to the Department. The Department has fulfilled its statutory obligation.

Taxpayer did not timely respond to these notices. Eventually, in 2018 those notices advanced to warrants and the matter was turned over to a third-party collection agency. Pursuant to IC § 6-8.1-8-8(1), the Department is permitted to "levy upon the property of the taxpayer held by a financial institution." Thus, Taxpayer had sufficient notice and the levy was proper. Taxpayer filed the required BC-100 form to close both accounts after the tax levy occurred.

In short, Taxpayer did not timely file the required returns for the Tax Years at Issue or properly close both accounts, resulting in the BIA assessments and subsequent levy. The Department properly notified Taxpayer within the specified due dates stated in the notices of proposed assessment and subsequent demand for payment to resolve the issue. The Department followed statutory procedures each step of the way. While the collection agency retained a portion of the money as a result of completing its collection effort, the Department had refunded Taxpayer the money which the Department received. The collection fees were not retained by the Department and, therefore, in the absence of Department error, the Department is not able to refund the collection fees.

FINDING

Taxpayer's protest is respectfully denied.

December 30, 2019

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