

DEPARTMENT OF STATE REVENUE

Information Bulletin #88A
Income Tax
December 2019
(Replaces Commissioner's Directive #5 dated December 2014)
Effective Date: Upon Publication

SUBJECT: Taxation of Nonresident Professional Athlete Team Members and Entertainers

REFERENCES: [IC 6-3-2-2](#); [IC 6-3-2-2.7](#); [IC 6-3-4-1](#); [IC 6-3.6-2-2](#); [IC 6-3.6-2-13](#)

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SUMMARY OF CHANGES

Aside from technical, nonsubstantive changes, this bulletin effectively provides the same information as it had before when it was published under the title Commissioner's Directive #5.

I. INTRODUCTION

Several issues are involved in enforcing the income tax liability that results from athletic and entertainment appearances in Indiana. The flow of revenue from ticket purchasers to performers varies, and different performers work under different types of contracts. In determining the Indiana tax liability that results from entertainment and certain athletic appearances in the state, three scenarios will be treated separately. The sections in this bulletin describe the scenarios and the treatment of the income received in each scenario.

II. EMPLOYEES OF A PROMOTOR OR AN ORGANIZER

The first scenario involves entertainers performing on a salaried basis. These entertainers are under contract as part of an employer-employee relationship and are paid a fixed amount not related to the location of a performance.

Nonresident entertainers incur no Indiana tax liability on their salaries. No apportionment of income is required for performances in Indiana because the entertainer's compensation is a predetermined amount unaffected by performances in Indiana. However, Indiana resident entertainers must file an Indiana income tax return and report their earnings.

NOTE: An Indiana resident entertainer under contract to an out-of-state employer must file an Indiana income tax return and report the entertainer's earnings. However, the resident entertainer may be eligible to receive a credit for taxes paid to another state, in accordance with [IC 6-3-3-3](#).

Enforcement of the tax liability incurred by employees of a promoter or an organizer is accomplished through withholding procedures. Promoters or organizers located in Indiana are required to withhold on their employees' salaries just as any other employer is required to withhold from employees' salaries.

III. INDEPENDENT CONTRACTORS

The second scenario involves entertainers and athletes who are not team members receiving payments for Indiana performances. The term "team" includes a professional baseball, basketball, football, hockey, or soccer team. For more information related to the taxation of nonresident athletes who are team members, please refer to Income Tax Information Bulletin #88, available online at www.in.gov/dor/3650.htm. The term "team" also includes race teams as defined by [IC 6-3-2-3.2](#). For more information related to the taxation and withholding for race team members, please refer to Income Tax Information Bulletin #88B, available online at www.in.gov/dor/3617.htm.

This situation includes some performers in tennis and golf tournaments, nightclubs, and concerts. These "independent contractors" are paid on a per-performance basis or are parties to contracts that do not include any employer-employee relationship. Generally, ticket revenue is the property of the promoter and is used to pay

expenses, including the performer's compensation for services.

An independent contractor incurs a tax liability in Indiana by performing here. Because these performers are not employees, the compensation they receive does not constitute wages or salary. Therefore, reciprocity would not apply in this situation. The independent contractor's income earned for performances in Indiana should be allocated entirely to Indiana.

NOTE: An Indiana resident independent contractor with similar contracts in other states must file an Indiana income tax return and report the independent contractor's income. However, income should be allocated to the state where it was earned. [IC 6-3-3-3](#) provides a credit for taxes paid to other states, which can be claimed on the Indiana resident income tax return.

Enforcement of the tax liability on independent contractors cannot be accomplished through withholding because the compensation is not salary or wages, unless the independent contractor is a member of a race team subject to the guidelines set forth in Income Tax Information Bulletin #88B. However, these individuals are required by [IC 6-3-4-4.1](#) to make estimated tax payments if they expect to have an Indiana tax liability of \$1,000 or more.

Any person making a payment to an independent contractor (other than a race team member) is required by [IC 6-3-4-9](#) to report all such payments. A copy of federal Form 1099 should be submitted to the department. More information related to independent contractors' responsibility for income tax reporting and withholding can be found in Income Tax Information Bulletin #86, available at www.in.gov/dor/3650.htm.

If the tax liability of an independent contractor is ignored, the department may require that a surety bond be posted pursuant to [IC 6-3-4-8\(f\)](#). Additionally, the department may also sue the performer in the performer's state of residence under the Reciprocal Full Faith and Credit Taxation Act codified in [IC 6-8-8](#).

IV. EMPLOYEES OF A PRODUCTION COMPANY

The third scenario involves entertainers and athletes who are not team members and who have organized an intermediate "production company" to receive payment for their performances. Typically, ticket revenue is collected by a promoter and paid to the production company. The production company then pays the performer. In this situation, the production company, its employees, or both might incur a tax liability.

Whether an employee of a production company incurs an Indiana tax liability must be determined by examining the terms of the employment contract, as follows:

- If the employee is paid a fixed amount periodically, regardless of whether the employee performs at all of the engagements, the employee will incur a tax liability in Indiana if the employee is an Indiana resident or if the production company has a business situs here. This situation is similar to that of employees of a promoter or an organizer.
- If the employee is paid on a per-performance basis or if the employee is paid a percentage of the production company's receipts, the employee will incur a tax liability by performing in Indiana. Income should be allocated to the state where it was earned. If allocation is unattainable, income should be apportioned in the same proportion that the production company's income was apportioned.

The production company's own tax liability is distinct from that of its employees. Whenever a production company is compensated for an Indiana performance, it incurs a tax liability. The actual liability depends on whether the company is organized as a sole proprietorship, a partnership, S corporation, limited liability company, or a C corporation.

The proprietor of a sole proprietorship and the partners, shareholders, or members in a partnership, an S corporation, or a limited liability company will be subject to the adjusted gross income tax on their Indiana income. A corporation will be subject to the adjusted gross income tax on its Indiana income. Indiana income is determined by using the single sales factor apportionment formula found in [IC 6-3-2-2](#).

Enforcement of the tax liability of a production company and its employees' liabilities are viewed separately:

- Payments by a production company to its employees are subject to withholding if the employees incur a tax liability in Indiana. Enforcement of this withholding requirement can be accomplished through the provision in [IC 6-3-4-8\(f\)](#) authorizing the department to require that the company post a surety bond with the department.

- If a production company is organized as a partnership or incorporated as an S corporation, the promoters are required to withhold adjusted gross income tax from any payments to nonresident shareholders or partners in accordance with [IC 6-3-4-12](#) and [IC 6-3-4-13](#) and to file composite returns on behalf of nonresident partners and/or shareholders. Enforcement of this withholding requirement can be accomplished through the provision in [IC 6-8.1-4-8\(f\)](#) authorizing the department to require that the company post a surety bond with the department.
- If a production company is a sole proprietorship or a partnership, the proprietor or partners are required to make estimated tax payments if (and to the extent) withholding payments are not made under [IC 6-3-4](#). Enforcement can be accomplished through the posting of a surety bond as provided in [IC 6-8.1-4-8\(f\)](#). Additionally, the department may also sue in the proprietor's or partner's state of residence under the Reciprocal Full Faith and Credit Taxation Act codified in [IC 6-8-8](#).

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