

**Final Order Denying Refund: 03-20191514**  
**Withholding Tax**  
**For 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Final Order Denying Refund.

**HOLDING**

Company failed to provide sufficient documentation to show that it was timely in its response to Department's proposed assessment and demand notice.

**ISSUE**

**I. Withholding - Collection Fees.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4; *P/S, Inc. v. Ind. Dep't of State Revenue*, 853 N.E.2d 1051 (Ind. Tax Ct. 2006).

Taxpayer protests the partial denial of its claim for refund.

**STATEMENT OF FACTS**

Taxpayer is a retail merchant primarily operating outside Indiana, but it has some Indiana employees. The Indiana Department of Revenue ("Department") determined that Taxpayer failed to withhold and remit tax for its Indiana employees. As a result, the Department issued a "best information available" assessment (the "BIA Assessment") for the estimated withholding tax due. Taxpayer neither protested the BIA Assessment nor file a withholding return. Thus, the BIA Assessment advanced to a demand notice and eventually to a tax warrant.

Taxpayer had their bank account levied for base tax, interest, penalty, and collection fees. Taxpayer filed a refund claim for the collection fees incurred by the Department, in addition to the excess tax, penalties, and interest paid. The Department granted a refund representing overstatement of BIA tax, penalties, and interest, but denied the \$3,382.67 portion representing the collection fees and costs. Taxpayer protests the partial denial of its claim for refund. An administrative hearing was held and this final order denying refund results. Additional facts will be provided as necessary.

**I. Withholding - Collection Fees.**

**DISCUSSION**

Taxpayer protests the Department's partial refund denial. Taxpayer maintains that it did not receive proper notice and therefore should be refunded collection fees. Taxpayer claims it is entitled to the full refund of the collection fees levied by the collection agency. The issue is whether the partial refund denial was proper.

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, "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, the liability advanced through the legally required procedures. Taxpayer failed to properly file and remit withholding tax. The Department issued the proposed assessment on October 15, 2018. Upon no response the Department staged the assessment through the demand notice and then collection stages.

The Department incurred fees based on a valid Department assessment that advanced to a tax warrant. The fees collected are proper if the fees were paid based on the information available to the Department at the time the fees are collected rather than at some time after collection. Additionally, 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.

In *P/S, Inc. v. Ind. Dep't of State Revenue*, the tax court concluded that the taxpayer was responsible for paying collection fees because it had not rebutted the presumption that it received the notices which the Department mailed. *P/S, Inc. v. Ind. Dep't of State Revenue*, 853 N.E.2d 1051, 1054-55 (Ind. Tax Ct. 2006). The court ruled, "when an administrative agency sends notice through the regular course of mail, a presumption arises that such notice is received." *Id.* at 1054. The court further explained that the taxpayer in that case merely asserted that it had not received notice and that the Department had explained that it had not received the notices as returned mail. *Id.*

In this case, the Department followed the correct procedure regarding its collection process. At the time, the Department sent notices to the proper address. The Department has determined that it neither erred in following the proper procedure, nor did it fail to give proper notice. Taxpayer's protest is respectfully denied.

### FINDING

Taxpayer's protest is denied.

April 21, 2020

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