

**Letter of Findings: 03-20200203  
Withholding Tax  
For Tax Years 2017 and 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Corporation failed to file WH-3's with the Department for the years under protest. Therefore, the assessment for withholding tax for these years was correct.

### ISSUE

#### **I. Withholding Tax - Failure to withhold.**

**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*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [45 IAC 3.1-1-101](#).

Taxpayer protests the assessment for failing to remit withholding tax.

### STATEMENT OF FACTS

Taxpayer is an Indiana corporation. As a result of an audit, the Indiana Department of Revenue ("Department") issued a proposed assessment for withholding tax against Taxpayer. The Department based its assessment on Taxpayer's failure to file WH-3s and withhold and remit income tax on bonuses paid to employees in Indiana for 2017 and 2018. Taxpayer protested the assessment and this Letter of Findings results. Additional facts will be provided as necessary.

#### **I. Withholding Tax - Failure to withhold.**

### DISCUSSION

Taxpayer protests the Department's withholding tax assessment for failing to file WH-3s and remit withholding taxes for tax years 2017 and 2018. Taxpayer provided documentation of remittance confirmation receipts from the Department's INtax software. Moreover, the Department has credited Taxpayer with the remitted payments for the years at issue. However, Taxpayer has yet to file WH-3s for the period under protest.

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).*

In addition, [45 IAC 3.1-1-101](#) provides:

Annual Reconciliation of Employers Withholding Tax, Form WH-3. Each withholding agent shall send or deliver the state copy of each withholding tax statement prepared by him, to the Department not later than the last day of February, immediately following the end of the calendar year. They shall be attached to a report showing the amount of Indiana Adjusted Gross Income Tax, if any, withheld and paid to the Department for the calendar year as indicated by the monthly or quarterly returns and a reconciliation with the total amount of tax withheld during this calendar year as reflected by the withholding statement. The County Adjusted Gross Income Tax shown on Form WH-3 should be indicated in the same manner as on Form WH-1, with no breakdown by county of individual tax withheld. Only on Form W-2 will the county tax be indicated as previously described. All reports and returns shall be on a calendar year basis, even though the withholding agent is on a fiscal year reporting basis.

Although Taxpayer provided receipts for remitting withholding tax for the years at issue, it has failed to file WH-3s with the Department as required by [45 IAC 3.1-1-101](#). The WH-3 form is required to verify the amount of withholding tax remitted by employers. Thus, Taxpayer failed to meet its burden under IC § 6-8.1-5-1(c).

### FINDING

Taxpayer's protest is denied.

September 29, 2020

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