

**Final Order Denying Refund: 03-20200244**  
**Withholding Tax**  
**For the Tax Year 2018**

**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**

The Department hired its collection agency prior to Company's response to notices which were properly issued. Therefore, Company is not entitled to a refund of collection fees.

**ISSUE**

**I. Withholding** - Collection Fees.

**Authority:** IC § 6-3-4-8; IC § 6-8.1-8-4; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the Department's assessment.

**STATEMENT OF FACTS**

Taxpayer was a business that closed its Indiana operations in 2017. After Taxpayer filed a business closure form, the Indiana Department of Revenue ("Department") determined that Taxpayer owed unremitted withholding tax for 2018. The Department therefore issued a proposed assessment for withholding tax. Taxpayer did not respond to the proposed assessment and the Department issued a demand notice for the unremitted withholding. Taxpayer did not respond to the demand notice and the liability advanced to the warrant stage. At that point, the Department employed a collection agency to collect the unpaid liability. After the collection agency collected the liability, Taxpayer filed forms with the Department showing \$0 withholdings due in 2018. Subsequently, the Department refunded the overpayment less the amount collected by its collection agency. Taxpayer filed a claim for refund in the amount of the collection fees. The Department denied the request and Taxpayer protested the denial of the refund of collection fees. An administrative hearing was held and this Final Order Denying Refund results. Further facts will be supplied as required.

**I. Withholding** - Collection Fees.

**DISCUSSION**

Taxpayer protested the denial of its refund request. Taxpayer misunderstood the BC-100 when it attempted to inform the Department that it closed its Indiana operations in 2017. Taxpayer put the business close date as December 31, 2018, believing that it meant it would not have to register for tax year 2018. The Department sent Taxpayer a Notice of Closed Account letter to Taxpayer, confirming closure date of December 31, 2018. The Department assessed Taxpayer for withholdings determined to be due for the tax period in question. Taxpayer was issued the AR-80 proposed assessment and AR-40 demand notices to the correct address on file. The Department then employed the services of a collection agency. After talking with the Department Taxpayer understood that it should have put December 31, 2017 on the BC-100. Taxpayer filed a zero WH-3 for the period ending December 31, 2018, after the Department's collection agency collected the liability. Taxpayer was refunded a portion of the refund request once the liability was settled. However, the remaining portion, and the portion Taxpayer requests to be refunded, were collection fees.

"[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.

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.

Taxpayer attempted to comply with its withholding duties under IC § 6-3-4-8. However, Taxpayer failed to correctly complete the BC-100 which caused the Department to assess liabilities for failure to withhold taxes in 2018. In addition, the Department issued a proposed assessment, a demand notice, and a warrant and before employing a collection agency. Under IC § 6-8.1-8-4, the Department is authorized to employ a collection agency to collect a debt arising from a tax warrant. Taxpayer did not contact the Department in a timely manner to halt the employment of the collection agency. The collection agency carried out its duties and is entitled to its collection fees, as provided by IC § 6-8.1-8-4. Thus, Taxpayer will not receive a refund on collection fees.

## FINDING

Taxpayer is denied.

December 15, 2020

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