

**Letter of Findings: 03-20221029**  
**Withholding Tax**  
**for Tax Years 2018 Through 2020**

**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 Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date is superseded or deleted by the publication of another document in the Indiana Register.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

Company failed to properly remit county withholding taxes for employees, therefore the Department's assessments were correct and will not be waived.

### ISSUE

#### I. Withholding Tax - Imposition.

**Authority:** IC § 6-3-4-8; IC § 6-8.1-5-1; IC § 6-8.1-7-1; *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); [45 IAC 3.1-1-97](#).

Taxpayer requests a reduction to the assessment of county withholding tax for tax years 2018, 2019, and 2020.

### STATEMENT OF FACTS

Taxpayer is an Indiana business that acquires, refurbishes, and markets used video game discs and video game equipment. During an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer did not withhold county income taxes for some of its employees for tax years 2018, 2019, and 2020. The Department therefore issued a proposed assessment for county income tax.

Taxpayer protested the assessment of county withholding tax. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Letter of Finding results. Additional facts will be provided as necessary.

#### I. Withholding Tax - Imposition.

### DISCUSSION

Taxpayer protests the assessment of withholding taxes on wages paid to its employees for tax years 2018, 2019 and 2020. The Department based the imposition of withholding tax on its review of Taxpayer's records which included Taxpayer's payroll documents, Form WH-3 (Annual Withholding Reconciliation Form) and issued W-2s (Wage and Tax Statements). Taxpayer does not dispute its failure to withhold tax but requests a reduction in the amount due because Taxpayer contends its failure to withhold was a deficiency in its onboarding process for new employees that has since been resolved. Taxpayer also states that the tax was reported timely to the Department and was likely already paid by employees when they filed individual returns.

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).

IC § 6-3-4-8(a) provides that employers must "withhold, collect, and pay over income tax on wages paid to . . . employees." The relevant regulation, [45 IAC 3.1-1-97](#), states that employers must "withhold [F]ederal taxes pursuant to the Internal Revenue Code," and are also "required to withhold from employees' wages Adjusted

Gross and County Adjusted Gross Income Tax." IC § 6-3-4-8(a)(1) specifically provides that the employer is "liable to the state of Indiana for the payment of the tax *required* to be deducted and withheld." (*Emphasis added.*)

Taxpayer asks for a reduction in its county withholding tax liability because: (1) the failure to collect and remit the tax due was an error that has been resolved; (2) Taxpayer timely reported the tax due to the Department for the period at issue; and (3) Taxpayer presumes its employees paid the county withholding tax due on their individual tax returns.

Taxpayer was required to withhold county tax from its employees' pay and is liable to the State of Indiana for the amount it was required to withhold pursuant to IC § 6-3-4-8. Taxpayer's correction of its failure to withhold on a going-forward basis does not impact the liability previously accrued.

Taxpayer reported the county withholding tax due to the Department in a timely manner, but it failed to collect and remit the tax. Taxpayer's timely filing of forms WH-3 and W-2 substantiates the existence of the tax liability; however, it does not support reducing the tax due. Taxpayer did not provide documentation to support its argument that its employees paid the county tax withholding on their individual tax returns. Thus, Taxpayer has not met its burden as required by IC § 6-8.1-5-1(c).

### FINDING

Taxpayer's protest is denied.

July 29, 2022

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