

**Letter of Findings: 02-20221128**  
**Corporate Income Tax**  
**For The Year 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 (the "Department") 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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**

Business established that it does not owe the assessed amount.

**ISSUE**

**I. Corporate Income Tax - Assessment.**

**Authority:** IC § 6-3-4-12; IC § 6-3-4-13; IC § 6-8.1-5-1; *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); [45 IAC 3.1-1-108](#).

Taxpayer protests the Department's assessment of additional corporate income tax.

**STATEMENT OF FACTS**

Taxpayer is an out-of-state company. For tax year 2020, the Indiana Department of Revenue ("Department") conducted a review of Taxpayer's Indiana Partnership tax return. As a result, the Department determined Taxpayer owed additional taxes for tax year 2020 and issued a Notice of Proposed Assessment for the base tax plus penalty and interest.

Taxpayer protested the assessment. An administrative hearing was held in which Taxpayer's representatives explained the basis for the protest. This Letter of Findings results. Additional facts will be provided as necessary.

**I. Corporate Income Tax - Assessment.**

**DISCUSSION**

Taxpayer protests the assessment of additional taxes, penalty, and interest. Taxpayer is an out-of-state real estate management company. In 2020, Taxpayer sold property, a portion of which was located in Indiana. Taxpayer did not withhold or remit Indiana taxes from the sale for its non-resident partner.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. A proposed assessment is prima facie evidence that DOR's claim for the unpaid tax is valid. IC § 6-8.1-5-1(c). The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. *Id.*; See e.g., *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 § 6-3-4-12 provides, in part:

- (a) **Every partnership shall, at the time that the partnership pays or credits amounts to any of its nonresident partners on account of their distributive shares of partnership income, for a taxable year of the partnership, deduct and retain therefrom the amount prescribed in the withholding instructions referred to in section 8 of this chapter.** Such partnership so paying or crediting any nonresident partner:
- (1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and retained under this section and shall not be liable to such partner for the amount deducted from such payment or credit and paid over in compliance or intended compliance with this section; and

(2) shall make return of and payment to the department monthly whenever the amount of tax due under [IC 6-3](#) and [IC 6-3.6](#) exceeds an aggregate amount of fifty dollars (\$50) per month with such payment due on the thirtieth day of the following month, unless an earlier date is specified by section 8.1 of this chapter. Where the aggregate amount due under [IC 6-3](#) and [IC 6-3.6](#) does not exceed fifty dollars (\$50) per month, then such partnership shall make return and payment to the department quarterly, on such dates and in such manner as the department shall prescribe, of the amount of tax which, under [IC 6-3](#) and [IC 6-3.6](#), it is required to withhold.

(b) **Every partnership shall, at the time of each payment made by it to the department pursuant to this section, deliver to the department a return upon such form as shall be prescribed by the department showing the total amounts paid or credited to its nonresident partners**, the amount deducted therefrom in accordance with the provisions of this section, and such other information as the department may require. Every partnership making the deduction and retention provided in this section shall furnish to its nonresident partners annually, but not later than the fifteenth day of the third month after the end of its taxable year, a record of the amount of tax deducted and retained from such partners on forms to be prescribed by the department. (**Emphasis added.**)

[45 IAC 3.1-1-108](#) provides further guidance regarding withholding and partnership filing requirements.

**Partnerships** required to withhold adjusted gross income tax under [IC 6-3-4-12](#) shall make returns (Form WH-1) with each payment of tax to the Department, **disclosing thereon the total amounts paid or credited to nonresident partners, the tax withheld therefrom**, and such other information as the Department may require. **The partnership must also file an annual withholding return**, Form WH-3 (including a copy of the WH-18 furnished to each nonresident) within thirty (30) days of the close of the calendar year. The partnership must furnish Form WH-18 to each nonresident partner not later than thirty (30) days from the close of the calendar year as proof that the tax upon his share of the partnership income has been withheld. (**Emphasis added.**)

Considering the requirements of IC § 6-3-4-12 and [45 IAC 3.1-1-108](#), Taxpayer should have withheld taxes from the sale of the Indiana property and reported such on its Indiana Partnership return. Failure to do so was an error. The question is whether the documentation provided by Taxpayer meets the required burden under IC § 6-8.1-5-1(c).

IC § 6-3-4-13 provides, in part:

(a) **Every corporation** which is exempt from tax under [IC 6-3](#) pursuant to [IC 6-3-2-2.8\(2\)](#) shall, at the time that it pays or credits amounts to any of its nonresident shareholders as dividends or as their share of the corporation's undistributed taxable income, withhold the amount prescribed by the department. Such corporation so paying or crediting any nonresident shareholder:

(1) shall be liable to the state of Indiana for the payment of the tax required to be withheld under this section and shall not be liable to such shareholder for the amount withheld and paid over in compliance or intended compliance with this section; and

(2) when the aggregate amount due under [IC 6-3](#) and [IC 6-3.6](#) exceeds one hundred fifty dollars (\$150) per quarter, then such corporation shall make return and payment to the department quarterly, on such dates and in such manner as the department shall prescribe, of the amount of tax which, under [IC 6-3](#) and [IC 6-3.6](#), it is required to withhold.

(b) **Every corporation shall, at the time of each payment made by it to the department pursuant to this section, deliver to the department a return upon such form as shall be prescribed by the department showing the total amounts paid or credited to its nonresident shareholders, the amount withheld in accordance with the provisions of this section**, and such other information as the department may require. Every corporation withholding as provided in this section shall furnish to its nonresident shareholders annually, but not later than the fifteenth day of the third month after the end of its taxable year, a record of the amount of tax withheld on behalf of such shareholders on forms to be prescribed by the department.

...

(e) **Amounts withheld from payments or credits to a nonresident shareholder during any taxable year of the corporation in accordance with the provisions of this section shall be considered to be a part payment of the tax imposed on such nonresident shareholder for the shareholder's taxable year within or with which the corporation's taxable year ends.** A return made by the corporation under subsection (b) shall be accepted by the department as evidence in favor of the nonresident shareholder of the amount so withheld from the shareholder's distributive share.

(f) This section shall in no way relieve any nonresident shareholder from the shareholder's obligation of filing a return or returns at the time required under [IC 6-3](#) or [IC 6-3.6](#), and any unpaid tax shall be paid at the time prescribed by section 5 of this chapter.

(g) Instead of the reporting periods required under subsection (a), the department may permit a corporation to file one (1) return and payment each year if the corporation pays or credits amounts to its nonresident shareholders only one (1) time each year. The withholding return and payment are due on or before the fifteenth day of the fourth month after the end of the taxable year of the corporation. However, if a corporation is permitted an extension to file its income tax return under [IC 6-8.1-6-1](#), the return and payment due under this subsection shall be allowed the same treatment as the extended income tax return with respect to the due dates, interest, and penalties under [IC 6-8.1-6-1](#).

Taxpayer provided supporting documentation, including but not limited to, copies of relevant tax returns and accompanying schedules. Considering the information provided during the protest and a review of the Department's records, Taxpayer has met its burden under IC § 6-8.1-5-1(c) showing the Department's proposed assessment is wrong. Taxpayer's protest is sustained.

#### FINDING

Taxpayer's protest is sustained.

November 29, 2022

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An [html](#) version of this document.