

DEPARTMENT OF STATE REVENUE

03-20210016.ODR

Order Denying Refund: 03-20210016
Withholding Tax
For the Tax Year Ending October 2019

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 Order Denying Refund.

HOLDING

Taxpayer failed to demonstrate that an erroneous payment was not already refunded.

ISSUE

I. Withholding Tax - Burden of Proof.

Authority: IC § 6-8.1-9-1; IC § 6-3-4-8; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [45 IAC 3.1-1-97](#).

Taxpayer argues that the Department's refund denial audit calculations for 2018 and 2019 were incorrect due to duplicated invoices.

STATEMENT OF FACTS

Taxpayer is a medical company doing business in Indiana. In January 2020, the Department issued, and Taxpayer received, a proposed assessment for withholding tax for the period ending October 2019. A payment in the amount of the proposed assessment was subsequently made in February 2020. Taxpayer timely filed a claim for refund, stating that the amount of withholding tax due was less than the payment made in February. The Indiana Department of Revenue ("Department") denied this claim, stating that there was no additional payment to be refunded. Taxpayer disagreed with the assessment and timely filed a protest to that effect. A hearing was held, and this Order Denying Refund results. Additional facts will be provided as necessary.

I. Withholding Tax - Burden of Proof.

DISCUSSION

Taxpayer protests the refund denial, claiming that the actual withholding tax liability was less than the amount paid and thus a refund is due.

"[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 § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund. This statute provides, in part:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department.

An Indiana employer is required to "withhold, collect, and pay over income tax on wages paid by such employer to such employee . . . [in] the amount prescribed in withholding instructions issued by the department." IC § 6-3-4-8(a). Subsection (a)(1) specifically provides that the employer is liable for the amount that it was required to withhold. These statutory requirements are restated in [45 IAC 3.1-1-97](#), which also explains that "[i]n the case of delinquency or nonpayment of withholding tax, the employer is liable for such tax, penalties, and interest." *Id.*

Taxpayer provided documentation showing that it paid the full amount of the proposed assessment in February 2020. However, this payment was not clearly identified in the documentation as being for withholding tax. The Department's records show that this payment was applied as a partnership tax payment and was subsequently

refunded. A refund check was issued and cashed by Taxpayer. Thus, no outstanding payment of withholding tax existed.

Subsequently, a tax warrant was issued for the outstanding withholding tax, which was paid in full by taxpayer. No evidence was provided to show that this December payment was for the incorrect amount. Therefore, no evidence provided shows Taxpayer is owed money by the Department.

FINDING

Taxpayer's protest is respectfully denied.

October 14, 2022

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