

**Memorandum of Decision: 03-20210017**  
**Withholding Tax**  
**For the December 2020 Tax Period**

**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 Memorandum of Decision.

**HOLDING**

Business provided sufficient documentation showing that it remitted more money than was withheld, and more money that was due in withholding tax, and is thus entitled to a refund.

**ISSUE**

**I. Withholding Tax - Calculation.**

**Authority:** [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 protests denial of its withholding tax refund claim.

**STATEMENT OF FACTS**

Taxpayer is a company doing business in Indiana. As an employer, Taxpayer filed state and county income tax withholding returns. Taxpayer completed its 2020 Form WH-3 reconciliation and included a claim for refund. The Department denied this refund claim, stating that there was a discrepancy between the amount of tax reported on the December 2020 WH-1 form and the totals from the 2020 WH-3 reconciliation. Taxpayer claims that it originally included an independent contractor in its withholding tax calculations and provided an amended WH-1 which Taxpayer believes was not correctly processed. An administrative hearing was held, and this Memorandum of Decision results. Further facts will be supplied as required.

**I. Withholding Tax - Calculation.**

**DISCUSSION**

Taxpayer protests the denial of its refund claim on that grounds that it has already corrected its error in subsequent tax filings and that none of its requested refund was withheld from an employee.

"[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, as well as the preceding audit, shall be entitled to deference.

[IC 6-3-4-8](#)(a) codifies the requirement of an employer to withhold tax, providing:

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 rates of any income taxes that the taxpayer is subject to under [IC 6-3-5](#), 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 6-3.5](#) the employer is required to withhold.

The relevant regulation is [45 IAC 3.1-1-97](#), which states in part:

Employers who make payments of wages subject to the Adjusted Gross Income Tax Act, and who are required to withhold Federal taxes pursuant to the Internal Revenue Code (USC Title 26), are required to withhold from employees' wages Adjusted Gross and County Adjusted Gross Income Tax.

Therefore, employers such as Taxpayer are required to withhold state and county adjusted gross income tax from payments of wages made to its Indiana employees.

Taxpayer claims it overpaid withholding tax due to an erroneous liability calculation. Included in Taxpayer's calculation was money paid to an independent contractor, from whom no tax was withheld. As evidence, Taxpayer provided federal tax forms showing that it provided its contractor with a corrected W-2 showing no income withheld and a 1099-NEC for monies received. Taxpayer also provided corrected WH-1 and WH-3 forms for Indiana withholding, as well as several federal forms showing that it has fixed the error at the Federal level.

After review, the Department finds that Taxpayer remitted more than was withheld from its employees. The Department's records show that Taxpayer is correctly owed a refund for money it remitted which was not due.

#### **FINDING**

Taxpayer's protest is sustained.

May 23, 2023

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