

**Letter of Findings: 03-20231355  
Withholding Tax  
For the Tax Years 2019 and 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 Department'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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 failed to document that it properly withheld income tax on wages paid to its employees. As such, Business was responsible for additional tax assessed.

### ISSUE

#### I. Withholding Tax - Burden of Proof.

**Authority:** [IC 6-3-4-8](#); [IC 6-8.1-5-1](#); [IC 6-8.1-5-4](#); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010).

Taxpayer protests the additional withholding tax assessed for 2019 and 2020.

### STATEMENT OF FACTS

Taxpayer is an Indiana limited liability company operating a gas station which has a convenience store. Taxpayer sells food and nonfood products, including but not limited to gasoline, groceries, fountain drinks, ice, newspapers, dairy products, snacks, cigarettes, and tobacco products.

Taxpayer has elected to be taxed as S Corporation and files Indiana S Corporate Income Tax returns. Taxpayer's income flows through to its sole shareholder ("Shareholder"), who in turn files Indiana income tax returns, reporting the flow-through income on his Indiana individual income tax returns.

In 2022, the Indiana Department of Revenue ("Department") audited Taxpayer's business records. Pursuant to the audit, the Department found that Taxpayer underreported its sales of cigarettes and tobacco products. The audit also found that Taxpayer employed two individuals working in the store but underreported withholding tax on wages paid to these individuals, as statutorily required. Taxpayer was assessed additional sales and use tax, withholding tax, penalty, and interest as a result.

Ultimately, the additional sales resulted in additional income to Taxpayer, which, in turn, passed through to its Shareholder. As such, the Department assessed Shareholder additional income tax.

Taxpayer and Shareholder protested the assessments, requesting that the Department make the final determination without a hearing. This Letter of Findings ensues and addresses Taxpayer's protest of withholding tax. Letter of Findings 04-20231466 (July 2023) addresses Taxpayer's protest of the sales and use tax assessment. Shareholder's protest of his income tax assessment is addressed in Letter of Findings 01-20231467 (July 2023). Additional facts will be provided as necessary.

#### I. Withholding Tax - Burden of Proof.

### DISCUSSION

Taxpayer protested the audit assessment of withholding tax on wages paid to its two employees. The Department's audit found that Taxpayer failed to pay minimum wages to its employees and remit the withholding tax on wages paid to its employees.

As a threshold issue, [IC 6-8.1-5-4\(a\)](#) requires that "[e]very person subject to a listed tax must keep books and

records so that the [D]epartment can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records [] include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks." The person also "must allow inspection of the books and records and returns by the [D]epartment or its authorized agents at all reasonable times." [IC 6-8.1-5-4\(c\)](#).

According to [IC 6-8.1-5-1\(b\)](#), the Department "shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the [D]epartment" if the Department "reasonably believes that a person has not reported the proper amount of tax due." Thus, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. [IC 6-8.1-5-1\(c\)](#); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). As such, the taxpayer is required to provide documentation explaining and supporting its challenge that the assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010).

The Department in this case assessed additional withholding tax based on the best information available. The Department found that, for the tax years, Taxpayer operated 18 hours per day and seven days a week. According to Taxpayer's records, it employed two individuals. As such, the Department assessed additional withholding tax based on a \$7.25 hourly minimum wage. The audit report noted the following:

During the audit the auditor completed several site visits. In those visits the auditor observed the business hours of operation as well as the number of employees working at the business. . . . [Taxpayer's] operating hours are from 5:00am to 11:00pm (18 hours) seven days a week. . . . A review of the W-2s indicated the employee's wage income was below an hourly minimum wage in the state of Indiana, based on the hours of operation of the store.

. . .

An adjustment is made to assess the taxpayer the state and county income taxes that were not withheld from the employee wages in accordance with [IC 6-3-4-8](#).

Taxpayer asserted that "[t]he business is primarily run by [Shareholder] so he does not withdraw a large salary from this business." Taxpayer also claimed that "[d]ue to labor shortages [it] has not been able to find adequate help at affordable hourly rate[.]" But Taxpayer did not provide any documents explaining the fact it underpaid its employees and underreported the withholding tax. As discussed above, "[p]oorly developed and non-cogent arguments are subject to waiver."

In short, given the totality of the circumstances, in the absence of other supporting documents, Taxpayer failed to meet its burden of proof, as required under [IC 6-8.1-5-1\(c\)](#), demonstrating that the assessment is wrong.

## FINDING

Taxpayer's protest is denied.

July 27, 2023

*Finding Replaces: New*

Posted: 09/27/2023 by Legislative Services Agency  
An [html](#) version of this document.