

**Letter of Findings: 03-20231999
Withholding Tax
For the Years 2020 and 2021**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Indiana Employer provided additional documents to support that the assessment was incorrect.

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](#); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); [45 IAC 3.1-1-97](#).

Taxpayer argues that, as an employer, it is not responsible for paying additional tax.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. Taxpayer employs individuals to conduct its business and regularly withholds and remits Indiana state and county income tax on wages it pays to its employees. In turn, Taxpayer deducts the wage expense on its income tax returns.

The Indiana Department of Revenue ("Department") audited Taxpayer's business records and tax returns for 2020 and 2021. Pursuant to the audit, the Department found that Taxpayer deducted an incorrect amount of wage expense on its 2020 and 2021 returns for wages paid to its employees. The Department assessed Taxpayer additional tax plus penalty and interest.

Taxpayer disagreed with the assessment and filed a protest to that effect. A hearing was held. This Letter of Findings results. Additional facts will be provided as necessary.

I. Withholding Tax - Burden of Proof.

DISCUSSION

The audit determined that Taxpayer incorrectly deducted wage expense on its income tax returns for wages paid to its employees. The Department's audit noted the following:

A review of the taxpayer's 2020 through 2021 salaries and wages reported on income tax returns and supported in the general ledger accounts revealed unreported 1099 or W2 wages issued for the taxpayer's employees.

Taxpayer disagreed and submitted additional documentation to support its protest that the audit assessment was overstated. Thus, the issue is whether Taxpayer provided verifiable documents sufficient to show that the audit assessment was incorrect.

Indiana mandates that every person who is subject to a listed Indiana tax must keep books and records, including all source documents, "so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." [IC 6-8.1-5-4\(a\)](#). 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\(c\)](#). Therefore, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are

Every employer is required to withhold taxes on wage payments to its employees pursuant to [IC 6-3-4-8](#), which states, in part, as follows:

(a) 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 local income tax rate that the taxpayer is subject to under [IC 6-3.6](#), 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 6-3.6](#) the employer is required to withhold.

...

(g) The provisions of [IC 6-8.1](#) relating to additions to tax in case of delinquency and penalties shall apply to employers subject to the provisions of this section, and for these purposes any amount deducted or required to be deducted and remitted to the department under this section **shall be considered to be the tax of the employer**, and with respect to such amount the employer shall be considered the taxpayer. **In the case of a corporate or partnership employer**, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes **shall be personally liable for such taxes, penalties, and interest.**

(Emphasis added).

Accordingly, [IC 6-3-4-8\(a\)](#) requires an employer 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\(a\)\(1\)](#) 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). [IC 6-3-4-8](#) specifically provides that the employer is liable for the amount that it was required to withhold.

[45 IAC 3.1-1-97](#) further explains in relevant 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.** (Emphasis added).

The employers are "withholding agents who are required to . . . make return of and payment to the Department . . . [of] tax due, for either County and State." *Id.* "All amounts deducted and withheld by an employer shall immediately upon deduction become the money of the State." *Id.* The regulation further states, "[i]n the case of delinquency or nonpayment of withholding tax, the employer is liable for such tax, penalties, and interest." *Id.*

Taxpayer provided additional verifiable documents including the requested wage reconciliation to support its protest. The Department therefore will conduct a supplemental audit review of the additional documentation. To the extent that the Department's supplemental review results in reducing the assessment, Taxpayer's protest is sustained; otherwise, its protest is denied.

FINDING

Taxpayer's protest is subject to the Department's supplemental audit review. To the extent that the Department's supplemental review results in reducing the assessment, Taxpayer's protest is sustained; otherwise, Taxpayer's protest is respectfully denied.

September 18, 2023

Finding Replaces: New

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