

Memorandum of Decision: 03-20232161
Withholding Tax
For The Tax Year 2016

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

The Department agreed with Company that it was entitled to a refund of remaining withholding taxes assessed.

ISSUE

I. Withholding Tax - Documentation.

Authority: [IC 6-3-4-8](#); [IC 6-8.1-5-1](#); [IC 6-8.1-9-1](#); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the denial of a refund claim for withholding taxes collected.

STATEMENT OF FACTS

Taxpayer is an Indiana-based law firm. In June 2017, the Indiana Department of Revenue ("Department") garnished approximately \$12,000 from Taxpayer's operating account for failure to file and pay withholding tax for several months. Taxpayer discovered that the amount taken from its operating account exceeded what it owed in withholding tax for the relevant months, including penalties and interest. In June 2019, Taxpayer sought a refund of the overpayment and filed a Form GA-110L claim for refund. On September 16, 2019, Taxpayer received a letter which stated:

The Indiana Department of Revenue (DOR) has received your Claim for Refund, Form GA-110L. **However, the DOR cannot officially accept your form because it is premature.** For tax withholding, the DOR cannot determine whether the tax is overpaid until the Form WH-3 annual return(s) and tax withholding statements for the year are filed; thus, a refund determination cannot be made. . .

(Emphasis in original.)

On October 18, 2019, Taxpayer filed a WH-3 annual tax withholding return. Taxpayer did not file another Form GA-110L claim for refund believing that filing the WH-3 form would result in a refund. Taxpayer then made a telephone call to the Department on November 18, 2020, at which time the Department notified Taxpayer that its claim for refund had been denied, though no denial letter was issued, and that its recourse was to protest the denial. Taxpayer submitted a protest to that effect. An administrative hearing was held and this Memorandum of Decision results. Additional facts will be provided as necessary.

I. Withholding Tax - Documentation.

DISCUSSION

Taxpayer argues it should be issued a refund because it owed significantly less in withholding taxes than collected by the Department and that, after learning of the failure to file the corresponding forms, it corrected its error by filing the required forms.

Indiana law affords taxpayers a statutory right to file a claim for refund where, "a person has paid more tax than the person determines is legally due for a particular taxable period. . ." [IC 6-8.1-9-1\(a\)](#). Additionally, "[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.'" *Indiana Dep't 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.

Under [IC 6-3-4-8\(a\)](#), any employer "making payments of wages subject to tax under [Art. 6-3] . . . is required . . . to withhold, collect, and pay over income tax on wages paid . . . [and] deduct and retain therefrom the amount prescribed in withholding instructions issued by the [D]epartment." Generally, an employer shall pay withholding taxes monthly; however, if the average monthly amount of withholding taxes for the previous calendar year does not exceed \$1,000, the employer may pay the tax by calendar year instead of monthly filings. [IC 6-3-4-8\(b\)](#).

If the Department reasonably believes a person has not reported the proper amount of tax due, the Department shall make a proposed assessment based on the "best information available." [IC 6-8.1-5-1\(b\)](#).

The Department garnished funds from Taxpayer's account based on the best information available. Taxpayer believed that more money was taken than was owed and sought a refund, which was denied by the Department. In denying Taxpayer's request for refund, the Department noted that it could not determine whether Taxpayer had overpaid until its 2016 WH-3 was submitted. In reviewing the protest, the Department was able to locate Taxpayer's 2016 WH-3. A review of Taxpayer's 2016 WH-3 and corresponding WH-1s confirms Taxpayer's claim that the Department collected more than was due. Therefore, Taxpayer is entitled to a refund of the difference between what the Department garnished from its account and what was owed.

FINDING

Taxpayer's protest is sustained.

February 16, 2024

Replaces Finding Document at: New

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