

COMMISSIONER'S DIRECTIVE #51
JANUARY 2018
(Replace Commissioner's Directive #51 dated September 2016)
Effective Date: January 1, 2018

SUBJECT: Tax Withholding for Race Teams

REFERENCES: IC 5-1-17.5-42; IC 6-3-2-3.2; IC 6-3-1-12; IC 6-3.6-2-2; IC 6-3.6-2-13

DISCLAIMER: Commissioner's directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUMMARY OF CHANGES

This directive is updated to reflect that income for team members is subject to local income tax and to reflect withholding requirements for local income tax.

DEFINITIONS

"Prizes" shall mean any purse, prize, or other amounts earned for placement or participation in a race or portion thereof, provided the race occurs in Indiana. For purposes of this directive, if money or other consideration is paid based on the participation in, or obtaining an aggregate finish over (e.g., points during a NASCAR or IndyCar season), a series of races, the portion of the money or other consideration attributable to Indiana shall be equal to the number of races in which a driver or team participated in Indiana divided by the total number of races in which that driver or team participated in all jurisdictions.

"Bonus" shall mean:

- (1) a bonus earned as a result of participation in a racing event, such as a performance bonus or any other bonus; and
- (2) a bonus paid for signing a contract, unless all of the following conditions are met:
 - (i) The payment of the signing bonus is not conditional upon the signee participating in a racing event for the team or performing any subsequent services for the team.
 - (ii) The signing bonus is payable separately from the salary and any other compensation.
 - (iii) The signing bonus is nonrefundable.

“Total income” means the total compensation received during the taxable year for services rendered. The term includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a race team member for services rendered in that year. The term does not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, or any other payments not related to services rendered to the race team.

“Indiana duty days” means the number of total duty days spent by a race team member within Indiana rendering a service for the race team in any manner during the taxable year, except travel days spent in Indiana that do not involve either a race, practice, qualification, training, testing, team meeting, promotional caravan, or other similar race team event. For purposes of determining the location of duty days, all Indiana activities associated with an Indiana race shall be considered to occur at the location of the Indiana race. For other racing-related activities such as testing at an Indiana race track, all Indiana activities shall be considered to occur at the location of the Indiana race track at which such activities occur.

“Total duty days” means all days during the taxable year that a race team member renders a service for the race team. The term includes:

- (1) race days, practice days, qualification days, training days, testing days, days spent at team meetings, days spent with a promotional caravan, and days served with the team in which the team competes or is scheduled to compete;
- (2) days spent conducting training and rehabilitation activities, but only if the service is conducted at the facilities of the race team; and
- (3) travel days that do not involve either a race, practice, qualification, training, testing, team meeting, promotional caravan, or other similar team event.

Total duty days for an individual who joins a race team during the season begin on the day the individual joins the team, and, for an individual who leaves a team, end on the day the individual leaves the team. When an individual changes teams during a taxable year, a separate duty day calculation must be made for the period the individual was with each team. Total duty days do not include those days for which a team member is not compensated and is not rendering a service for the team in any manner, including days when the team member has been suspended without pay and prohibited from performing any services for the team.

“Race team” includes a professional motorsports racing team that has services rendered by a race team member in Indiana or participated in a racing event at a qualified motorsports facility (as defined in IC 5-1-17.5-14).

“Race team member” includes employees or independent contractors who render services on behalf of the race team. The term includes, but is not limited to drivers, pit crew members, mechanics, technicians, spotters, crew chiefs, and any other individual whose activities directly impact the race car during a race, practice, qualification, training, and testing.

WITHHOLDING REQUIREMENTS-PRIZE MONEY

For any entity paying prizes based on an event conducted in a motorsports investment district (currently limited to the Indianapolis Motor Speedway), whether a race operator, a race track, a race team, or any other person or entity, the entity shall withhold a portion of the prize money remitted to any person or entity. This applies whether the actual entity paying the prize money is domiciled in the district or outside the district. For the first payment of prize money to any person or entity, tax shall be withheld at the Indiana individual income tax rate of 3.23 percent (3.23%). Any withholding for prize money shall be reported by the first entity paying prize money following the withholding tax filing guidelines.

Each person or entity responsible for withholding shall establish a withholding account for purposes of reporting amounts withheld from prize money. If an entity responsible for withholding does not have an Indiana withholding account, it must open an account with the Indiana Department of Revenue (DOR). This can be done online through the department's INtax program, available online at www.intax.in.gov.

If an entity already has established one or more withholding accounts, the entity shall establish a separate withholding account for reporting withholdings from prize money. The person or entity shall report the withholdings on Form WH-1. The person or entity shall issue a Form 1099 for the recipient for purposes of reporting any tax withheld, and include copies of 1099 forms issued when filing the annual WH-3.

If a person or entity has prize money withheld on its behalf, that person or entity must provide evidence of the tax withholding (such as a 1099) to receive credit for the withholding on any return filed with the department.

Nothing in these withholding requirements is intended to relieve any entity from other tax withholding requirements imposed by other provisions of Indiana law. For additional information on claiming the credit and refund (or claiming credit for such withholdings against other tax liabilities), see page 7 of this directive.

EXAMPLE 1:

Indianapolis Motor Speedway ("Race Track") pays Race Promoter \$1,000,000 as a prize for a race in Indiana in May. Race Track shall withhold 3.3% of the \$1,000,000 paid (3.23% in 2017 and later) to Race Promoter. Race Track shall remit the tax withheld to the department with a Form WH-1 for the month in which the prize money is paid. Race Track shall issue a Form 1099 to Race Promoter reporting the \$1,000,000 in prize money paid and the tax withheld.

EXAMPLE 2:

From the \$1,000,000 paid in Example 1, Race Promoter pays \$800,000 in prize money to Race Team A. Race Promoter is not required to withhold on the \$800,000 as long as the money was previously withheld on by Race Track on the Race Promoter's behalf (see

Example 1 above). Race Promoter may use the amount withheld by the Race Track as a credit toward any composite income tax paid on behalf of its non-resident individual team members. Alternatively, the Race Promoter can receive credit toward any other Indiana tax liability due, or excess withholding may be refunded (see refund procedure described on page 7).

WITHHOLDING REQUIREMENT—COMPENSATION, SALARY, AND/OR BONUSES

Any payment of compensation, salary and/or bonus by an employer or race team (hereinafter referred to as “employer”) to a race team member shall have tax withheld on the Indiana portion of the income. This does not include amounts paid as prize money to a team member based on a team member’s ownership interest in a race team addressed above. This withholding shall apply regardless of the status of the race team member as an independent contractor, employee, or other designation. For nonresident race team members, the Indiana portion of the income shall be equal to:

Total income for the year (as defined above) times Indiana duty days divided by total duty days.

In addition, IC 6-3.6-2-13(3) provides that, effective for services rendered on or after January 1, 2018, team members who are neither Indiana residents nor nonresidents with a principal place of business or employment in Indiana (each determined as of January 1 of the taxable year) will be subject to local income tax. The income subject to local income tax for a particular county will be equal to:

Total income for the year (as defined above) times Indiana duty days worked in that county divided by total duty days.

The amount to be withheld should be computed based on the instructions provided in Departmental Notice #1, available at www.in.gov/dor/reference/files/dn01.pdf. If the total income for the year cannot be readily determined at the time of the race, an entity paying income to a race team member shall determine the Indiana income subject to withholding by taking the total income paid to the race team member for the period(s) in which the race team member was performing services, multiplying that by the number of days worked in Indiana during the period(s), then dividing by the number of days worked everywhere during the period(s). The proration of income shall be based on the period in which the services are performed, rather than the period in which the compensation is paid. For nonresident team members who do not have a principal place of business or employment in Indiana as of January 1 of a particular year, the income subject to local tax withholding for each county shall be computed in a similar manner as the Indiana income subject to withholding.

The withholding instructions above for the amounts to be paid based on duty days are applicable only to nonresidents and only to the extent the team member derives Indiana income. For purposes of withholding on residents, whether employees or independent contractor race team

members, Indiana law governing the amount of withholding for Indiana state and local income tax for residents shall otherwise apply.

Also, if a team member is otherwise subject to tax withholding for nonresident partners, S corporation shareholders, trust beneficiaries, any Indiana employment other than as a member of a race team, or any other provision under Indiana law (including prize money withholding discussed previously), those tax withholding rules shall apply to the extent the team member derives Indiana income from these sources. The local income tax rules under IC 6-3.6-2-13(3) (as effective January 1, 2018) for team members who are neither Indiana residents nor have a principal place of business or employment in Indiana on January 1, do not apply to distributive share income.

If the race team member is an employee of the race team and is a resident of a state with a reciprocal income tax agreement with Indiana or a resident of a reverse credit state (currently Arizona, Oregon, and the District of Columbia), the race team member's wages are not subject to state income tax withholding. However, the race team member's wages are still subject to local income tax withholding effective January 1, 2018. Other non-employee payments (e.g., payments to a contractor) to race team members that are residents of a state with a reciprocal agreement are not subject to the reciprocity agreements and are still subject to state and local tax withholding by the race team. Currently, the states with reciprocal income tax agreements with Indiana are Kentucky, Michigan, Ohio, Pennsylvania, and Wisconsin.

In each of the next three examples, assume the race team member resides outside Indiana in a state not subject to a reciprocal income tax agreement with Indiana. Further, assume that all Indiana duty days occur in one county.

EXAMPLE 3:

A race team member earns \$50,000 in 2018. The race team member has five duty days in Indiana in 2018 and 100 total duty days. The race team's withholding on behalf of the race team member shall be based on \$50,000 times five Indiana duty days divided by 100 total duty days, or \$2,500.

EXAMPLE 4:

A race team member earns \$5,000 for a two-week period beginning May 15 and ending May 28. The team member has five Indiana duty days and eight total duty days during the period. The race team cannot determine the exact number of duty days the team member will work during the year. The withholding shall be based on \$5,000 times five Indiana duty days divided by eight total duty days, or \$3,125. This withholding shall be reported during the month the payment is made to the team member, even if the payment month is different than the months in which the race member performs services.

EXAMPLE 5:

A race team member earns \$40,000 during the course of the year prior to December. The race team member has five duty days in Indiana in 2018 and 100 total duty days and had \$2,000 of Indiana income subject to withholding. In December, the race team member receives a \$10,000 bonus. The bonus is considered compensation subject to withholding. The \$10,000 bonus is subject to withholding based on \$10,000 times five Indiana duty days divided by 100 total duty days, or \$500 of Indiana income. Withholding on this amount is in addition to the previous withholding on the previous payments to the race team members.

Any tax withheld on behalf of Indiana shall be reported and remitted to the department on a monthly basis unless the race team is allowed to report as an annual return filer. Any tax withholding should be reported to the department on Form WH-1. If the employer files a separate Form WH-1 for each Indiana location, these taxes should be reported for any location corresponding to the location of the race. If an employer files a single Form WH-1 for all Indiana locations, the taxes should be reported on that Form WH-1.

If any income is reported on a federal Form W-2, that federal Form W-2 is sufficient for reporting the Indiana portion of the total income. If any income is not reported on a federal Form W-2 (for instance, the team member is an independent contractor), the employer should provide the team member with a Form 1099. The Form 1099 should report all Indiana income and the tax withheld on that income. These W-2 and 1099 forms must be sent to the department annually with the Form WH-3 unless directed otherwise as in the instructions for those individuals included on the nonresident individual race team member composite return.

EXAMPLE 6:

A race team member earns \$50,000 in 2018. The race team member has five duty days in Indiana in 2018 and 100 total duty days. The race team member resides in Indiana. The race team's withholding on behalf of the race team member shall be based on \$50,000, regardless of any proration for duty days inside and outside Indiana and regardless of the race team member's status as an employee or an independent contractor.

EXAMPLE 7:

A nonresident race team member also owns an interest in an S corporation. The race team's withholding for any race team income paid to the race team shall be based upon the member's duty days computed according to the guidelines set forth in this directive. The race team income is subject to both state and local income tax withholding, regardless of whether the member had the member's principal place of business or employment in Indiana on January 1. Any nonresident shareholder withholding that is due for the race team member for its distributive share of the S corporation income shall be determined pursuant to Indiana statutes and any guidelines set forth by the department that apply generally to nonresident S corporation shareholders.

Each race team shall provide information to team members sufficient to determine each team member's Indiana income and the portion attributable to activities during motorsports events. This will be reported on Form IMS-1, available online at www.in.gov/dor/5297.htm. This information shall include the team member's name, social security number, total compensation, Indiana duty days, and total duty days. Substantiation of duty days must be provided upon the request of the department.

If a race team is not otherwise subject to Indiana employee tax withholding AND would have less than \$1,000 in Indiana income subject to race team member withholding based on this directive, the race team is not required to withhold taxes for its team members in their capacity as team members. However, this shall not relieve the race team from other withholding, filing, and tax payment provisions arising under Indiana law.

COMPOSITE RETURN FILING

For taxable years beginning after Dec. 31, 2013, a race team not based in Indiana shall be allowed to file a composite return on behalf of nonresident individual team members if the same amount of tax is remitted as if the team member had filed an individual income tax return. Thus, the nonresident race team member only may be included on the composite return if the team member's only source of Indiana income is as a team member. Other individuals, such as resident individuals or individuals who have Indiana income from other sources, may not be included in such composite return.

The filing of a composite return exempts a race team member from having to file an individual income tax return if the income from the race team is the individual's only source of Indiana income. The race team member must properly execute and sign the Race Team Affidavit for each year the race team member has elected to be included in the composite return for the Race Team to include the member in its composite return.

If a race team or other entity for whom composite filing is required has taxes withheld on prize money awarded to the race team or other entity, the race team or other entity may use the prize money withholding as a credit against such composite withholding. However, such credit is only permitted to offset any tax due and is not permitted to be refunded from the composite return.

If any excess payment or credit exists (including for teams for which no composite filing is required), a race team or other entity must file a Form GA-110L and an amended Form WH-3 in order to claim a refund of any excess payments or credits. The race team may designate that any excess be applied to other accounts (e.g., corporate income or nonresident partner/shareholder withholding); however, such request must be made on a GA-110L.



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