

DEPARTMENT OF STATE REVENUE

03-20200396.LOF; 03-20200397.LOF

**Letter of Findings: 03-20200396, 03-20200397
Withholding Tax
For the Tax Year 2019**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Businesses demonstrated that penalty abatement should be granted and that no additional withholding tax was owed.

ISSUES**I. Withholding Tax - Calculations.**

Authority: IC § 6-3-4-8.2; IC § 6-8.1-5-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayers protest proposed assessments for additional withholding tax.

II. Tax Administration - Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayers request that the Department abate the assessed penalty.

STATEMENT OF FACTS

Taxpayers are related casino businesses that collected and remitted Indiana withholding tax on gamblers' winnings during the tax year. Taxpayers filed their Form WH-3s late, showing more tax owed than was paid by Taxpayers throughout 2019. The Indiana Department of Revenue ("Department") issued assessments for the remaining tax due, according to the WH-3s, plus penalties and interest. Taxpayers filed a protest of these assessments and an administrative hearing was held. This Letter of Findings results. Additional facts will be provided as necessary.

I. Withholding Tax - Calculations.**DISCUSSION**

Taxpayers protest the assessment of additional withholding tax and claim that their WH-3s understated the amount of tax paid, arguing that their originally filed WH-1s were correct.

As a threshold issue, it is the Taxpayers' responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[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 shall be entitled to deference.

IC § 6-3-4-8.2 establishes the requirement for casinos to withhold tax from gambler winnings as follows:

(a) Each person in Indiana who is required under the Internal Revenue Code to withhold federal tax from winnings shall deduct and retain adjusted gross income tax at the time and in the amount described in withholding instructions issued by the department.

(b) In addition to amounts withheld under subsection (a), every person engaged in a gambling operation (as defined in [IC 4-33-2-10](#)) or a gambling game (as defined in [IC 4-35-2-5](#)) and making a payment in the course of the gambling operation (as defined in [IC 4-33-2-10](#)) or a gambling game (as defined in [IC 4-35-2-5](#)) of:

(1) winnings (not reduced by the wager) valued at one thousand two hundred dollars (\$1,200) or more from slot machine play; or

(2) winnings (reduced by the wager) valued at one thousand five hundred dollars (\$1,500) or more from a keno game;

shall deduct and retain adjusted gross income tax at the time and in the amount described in withholding instructions issued by the department. The department's instructions must provide that amounts withheld shall be paid to the department on the twenty-fourth calendar day of each month. Any taxes collected during the month but after the day on which the taxes are required to be paid shall be paid to the department at the same time the following month's taxes are due. Slot machine and keno winnings from a gambling operation (as defined in [IC 4-33-2-10](#)) or a gambling game (as defined in [IC 4-35-2-5](#)) that are reportable for federal income tax purposes shall be treated as subject to withholding under this section, even if federal tax withholding is not required.

(c) The adjusted gross income tax due on prize money or prizes:

(1) received from a winning lottery ticket purchased under [IC 4-30](#); and

(2) exceeding one thousand two hundred dollars (\$1,200) in value;

shall be deducted and retained at the time and in the amount described in withholding instructions issued by the department, even if federal withholding is not required.

(d) In addition to the amounts withheld under subsection (a), a qualified organization (as defined in [IC 4-32.3-2-31\(a\)](#)) that awards a prize under [IC 4-32.3](#) exceeding one thousand two hundred dollars (\$1,200) in value shall deduct and retain adjusted gross income tax at the time and in the amount described in withholding instructions issued by the department. The department's instructions must provide that amounts withheld shall be paid to the department before the close of the business day following the day the winnings are paid, actually or constructively.

Next, the Department refers to IC § 6-8.1-5-1(b), which states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail. (Emphasis added).

Thus, if the Department reasonably believes that a taxpayer has not paid the proper amount of tax, the Department shall issue an assessment for unpaid tax on the basis of the best information available.

In support of its protest, Taxpayers provided documentation in the form of multiple spreadsheets and payment vouchers. These documents show specific transactions in detail which were mistakenly excluded from the WH-3s. The tax paid on these transactions account for the discrepancy between the WH-3s and the WH-1s. The information provided during the protest process demonstrates that all taxes owed have already been paid. Therefore, the Taxpayers have met their burden to prove the proposed assessments are incorrect.

FINDING

Taxpayers' protest is sustained.

II. Tax Administration - Penalty.

DISCUSSION

Taxpayers request that the Department abate the penalty assessments because Taxpayers acted like ordinary and reasonable taxpayers in their attempt to file and remit.

IC § 6-8.1-10-2.1 penalizes a taxpayer who fails to file or remit the correct amount of tax due on or before the due date of the return or payment. Subsection d of the statute states that "[i]f a person subject to the penalty imposed under this section can show that the failure . . . was due to reasonable cause and not due to willful neglect, the department shall waive the penalty." IC § 6-8.1-10-2.1(d).

[45 IAC 15-11-2](#)(b) further explains:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department shall abate the penalty when a taxpayer "affirmatively establishes that the failure to . . . pay the full amount of tax due . . . or pay a deficiency was due to reasonable cause and not due to negligence." [45 IAC 15-11-2](#)(c); see also IC § 6-8.1-10-2.1(d).

Finally, in order to establish reasonable cause, the taxpayer is required to demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed" [45 IAC 15-11-2](#)(c). The Department is mindful that "[r]easonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case." *Id.* In determining whether the taxpayer has reasonable cause, the Department is required to consider the following factors:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment. *Id.*

Taxpayers, in this instance, generally have a good history of compliance. Taxpayers explained that the person at their companies responsible for filing WH-3s left abruptly and without notice, resulting in a delay to their filing process. Moreover, Taxpayers explained that they have since implemented new procedures to add redundancy to their filing responsibilities to ensure this situation does not reoccur. Therefore, given the totality of the circumstances, the Department is prepared to abate the penalty.

FINDING

Taxpayers' protest is granted.

SUMMARY

Taxpayers' protests on both Issue I and Issue II are granted. Taxpayers' assessments will be eliminated, pursuant to this Letter.

June 30, 2021

Posted: 08/25/2021 by Legislative Services Agency

