

Letter of Findings Number: 06-0513
Individual Income Tax
For Tax Years 2005

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ISSUE

I. Individual Income Tax—Indiana Source Income.

Authority: IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; [45 IAC 3.1-1-7](#); [45 IAC 3.1-1-23](#); [45 IAC 3.1-1-25](#).

Taxpayer protests the assessment of income tax on Indiana source income and the reduction in the amount of refund received.

STATEMENT OF FACTS

Taxpayer moved from Indiana to Tennessee during the tax year. Taxpayer received income derived from a severance agreement that was received for services performed in Indiana. Taxpayer continued to receive payments from the severance agreement after he moved to Tennessee, but failed to include these payments as Indiana income on its individual income tax return. The Indiana Department of Revenue (Department) assessed additional adjusted gross income tax against Taxpayer for the 2005 tax year, which reduced Taxpayer's refund. Taxpayer protests this assessment of tax and the reduction of refund for the 2005 tax year. An administrative hearing was held and this Letter of Findings results.

I. Individual Income Tax—Indiana Source Income.

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC § 6-8.1-5-1(b).

The Department assessed additional income tax on income Taxpayer received from severance payments derived from services performed in Indiana. IC § 6-3-2-1(a) imposes the adjusted gross income tax "on that part of the adjusted gross income derived from sources within Indiana of every non-residential person." IC § 6-3-2-2(a) provides that "[w]ith regard to... nonresident persons, 'adjusted gross income derived from sources within Indiana', for purposes of this article, shall include... (3) income from a trade or profession conducted in this state."

Taxpayer was employed and performed services in Indiana. Taxpayer received severance payments subject to a severance agreement for those services performed in Indiana. Taxpayer asserts that after it had moved to Tennessee and had become a part-year resident, any severance payments received were not subject to Indiana income tax.

Under [45 IAC 3.1-1-7\(4\)](#), concerning allocation of income among states, "[a]ccumulated vacation, bonus, severance [sic.] and sick pay is directly attributable to services performed and is taxed by the state where the services were performed." Further, [45 IAC 3.1-1-23\(2\)](#), provides:

Any person who, on or before the last day of the taxable year, changes his residence or domicile from Indiana to a place without Indiana, with the intent of abiding permanently without Indiana, is subject to adjusted gross income tax on all taxable income earned while an Indiana resident. Indiana will not tax income of a taxpayer who moves from Indiana and becomes an actual domiciliary of another state or country except that income received from Indiana sources will continue to be taxable.

With respect to the tax liability of a nonresident, [45 IAC 3.1-1-25](#), in relevant part, provides:

All persons who are not residents of Indiana are required to report that portion of their entire income directly or constructively from or attributable to business, activities or any other source within Indiana.... A non resident must include on his tax return all gross income received from a business, activities, or any other source in Indiana whether taxable or not. In order to avail himself of the deduction of non-taxable income, the non-resident must first include the non-taxable portion of his income in the total gross income figure.

Since the income Taxpayer received from the severance agreement was derived from services performed in Indiana, Taxpayer's Indiana source income is taxable in Indiana. Therefore, Taxpayer's refund was rightfully reduced to cover the additional tax liability resulting from the severance payments.

FINDING

Taxpayer's protest is denied.

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