

Letter of Findings Number: 07-0175
Income Tax
For Tax Year 2004

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ISSUES

I. Income Tax—Individual.

Authority: IC § 6-3-2-2; IC § 6-8.1-5-1.

Taxpayer protests the assessment of individual income tax.

II. Tax Administration—Negligence Penalty.

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

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer received taxable compensation from an Indiana company in the horse-racing industry for tax years 2004 and 2005. As a result of an investigation, the Indiana Department of Revenue ("Department") issued proposed assessments for individual income tax, penalty and interest for 2004 and 2005. Taxpayer protests a portion of the proposed assessment and the imposition of penalty. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Income Tax—Individual.

DISCUSSION

Taxpayer protests a portion of the proposed individual income tax assessment issued by the Department for the tax year 2004. Specifically, Taxpayer protests the inclusion of fifteen thousand dollars (\$15,000) related to the sale of a horse in Indiana. Taxpayer states that it did not sell the horse in question, but rather purchased the horse. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The Department imposed individual adjusted gross income tax on the basis of information it received from a business in the Indiana horse-racing industry. This was the best information available to the Department at the time of the investigation. As explained by IC § 6-8.1-5-1(b):

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.)

Also, IC § 6-3-2-2(a) states in relevant part:

With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state; and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter.

....

In the course of this protest, Taxpayer has provided documentation establishing that it purchased the horse in question. Since purchasing a horse in Indiana does not result in income derived from sources within Indiana, as defined in IC § 6-3-2-2(a), the fifteen thousand dollars being protested here should not be included in the calculations of Taxpayer's Indiana adjusted gross income.

In conclusion, Taxpayer did have adjusted gross income derived from sources within Indiana, as defined by IC § 6-3-2-2(a). Taxpayer has provided sufficient documentation to establish that it purchased the horse in question, and did not sell the horse in question. Taxpayer still has Indiana adjusted gross income upon which tax is due, but this income does not include the fifteen thousand dollars Taxpayer paid to purchase the horse in question.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration–Negligence Penalty.

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty for the tax year in question. Taxpayer protests the imposition of penalty. The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to [45 IAC 15-11-2\(b\)](#), which states:

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.

[45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must 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 under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to a penalty under IC § 6-8.1-10-2.1(a). While Taxpayer was sustained on its protest of Issue I, there remain assessments for Indiana adjusted gross income taxes which are still properly due. Taxpayer has not affirmatively established that his failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#). Since Taxpayer was sustained on Issue I, the penalty will be recalculated from the lower amount.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer is sustained on Issue I, and the fifteen thousand dollars will be removed from the Indiana adjusted gross income tax calculations. Taxpayer is denied on Issue II. Penalty will remain, but will be recalculated after the removal of the fifteen thousand dollars discussed in Issue I.

Posted: 05/28/2008 by Legislative Services Agency

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