

Letter of Findings Number: 07-0158
Income Tax
For Tax Years 2003-05

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ISSUE

I. Income Tax—Individual.

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

Taxpayer protests the assessment of individual income tax.

STATEMENT OF FACTS

Taxpayer is an individual resident of another state. As the result of an investigation, the Indiana Department of Revenue ("Department") determined that Taxpayer earned income in Indiana in 2003, 2004, and 2005. Accordingly, the Department issued proposed assessments for income tax, penalty, and interest for those years. Taxpayer protested that the income was reported to the home state and income tax was therefore not owed to Indiana. An administrative hearing was scheduled, but neither Taxpayer nor Taxpayer's representative attended or telephoned at the scheduled hearing time. This Letter of Findings was written based on the material Taxpayer and Taxpayer's representative sent in prior to the hearing date. Further facts will be supplied as required.

I. Income Tax—Individual.

DISCUSSION

Taxpayer protests that he paid income tax to the home state, and does not owe any income tax to Indiana. Taxpayer's representative sent portions of copies of Taxpayer's home state returns and federal returns to explain that the income in question was reported on those returns. 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 refers to IC § 6-3-2-2(a), which states:

(a) 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 case of nonbusiness income described in subsection (g), only so much of such income as is allocated to this state under the provisions of subsections (h) through (k) shall be deemed to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within the state of Indiana. In the case of compensation of a team member (as defined in section 2.7 of this chapter) only the portion of income determined to be Indiana income under section 2.7 of this chapter is considered derived from sources within Indiana. In the case of a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code, only so much of the income as is apportioned to Indiana under subsection (r) is considered derived from sources within Indiana.

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(Emphasis added.)

Also, [45 IAC 3.1-1-25](#) states:

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, with the exception of nonresident members of the armed forces receiving compensation for military duty in Indiana.

These latter persons will not be subject to the adjusted gross income tax on their military pay. A nonresident 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 nonresident must first include the non-taxable portion of his income in the total gross income figure.

In order to qualify as a nonresident, the taxpayer shall submit proof, upon demand by the department, of having indicated his bona fide intention to reside permanently elsewhere before the last day of the taxable

year.

Such person changing his domicile during a taxable year may also be required to furnish evidence of compliance with the requirements of the other state with respect to taxation and the qualification as a resident citizen thereof.

Taxpayer states that all income was reported on federal returns and on home state returns. Taxpayer has offered no explanation or documentation explaining why Taxpayer is not subject to the requirements of IC § 6-3-2-2(a) and [45 IAC 3.1-1-25](#). Since Taxpayer earned income in Indiana, as defined by IC § 6-3-2-2(a), Taxpayer was required to report that income to Indiana, as provided by [45 IAC 3.1-1-25](#). Taxpayer did not do so. Taxpayer has not met the burden imposed by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

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