DEPARTMENT OF STATE REVENUE

01-20080549.LOF

Letter of Findings: 08-0549
Individual Indiana Income Tax
For the Year 2007

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ISSUES

I. Adjusted Gross Income Tax – Burden of Proof.

Authority: IC § 6-8.1-5-1(b); IC § 6-8.1-5-1(c).

Taxpayer argues that the Department of Revenue has failed to meet its burden of proof necessary to substantiate the "proposed assessment."

STATEMENT OF FACTS

Taxpayer filed an Indiana IT-40 income tax return. On that return, taxpayer reported that he had received "0" Indiana adjusted income during 2007. Taxpayer claimed a refund of the state and county tax which had been withheld by his employer. Along with that return, taxpayer filed a specious "Certification of Federally Privileged Status" claiming that he was not a "federally privileged worker." In addition, taxpayer filed a Federal Form WH-4852 purporting to correct the W-2 forms supplied by his employer. On the federal form, taxpayer alleged that the money his employer had paid him did not constitute "wages." The Department of Revenue (Department) rejected the taxpayer's refund request and sent taxpayer a "delinquent tax liability" notice. Taxpayer submitted a protest and the matter was assigned to a hearing officer. A hearing was scheduled during which taxpayer was provided an opportunity to explain the basis for his protest. A number of taxpayer's original arguments – that he resided in "one of several non-federal states" and that he was not "an officer or employee of an (sic) 'United States Corporation'" – have been left by the wayside. Taxpayer's remaining arguments were that the Department failed to prove the proposed adjustment, that he did not receive taxable income from his employer, and that the Department lacks authority to correct his original return.

I. Adjusted Gross Income Tax – Burden of Proof.

DISCUSSION

Taxpayer argues that the Department failed to meet its burden of demonstrating that he owed 2007 Indiana income tax and that the Department is precluded from correcting his originally filed return. To that end, taxpayer cites to IC § 6-8.1-5-1(b) which states that, "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 due on the basis of the best information available to the department."

Taxpayer argues that the authority granted the Department in IC § 6-8.1-5-1(b) only permits the Department to "allow or disallow filer clamed *[sic]* deductions and similar adjustments claimed by the filer as applicable to whatever the filer has declared as the starting 'income' figure on the return and/or to collect the math involved in the application of the rate of tax to whatever is the final 'net income' figure arrived at on the return." Other than taxpayer's apparently wishful thinking, taxpayer cites to no authority for this proposition. IC § 6-8.1-5-1(b) plainly states that the Department may issue a proposed assessment if it "reasonably believes" that the taxpayer has not reported the correct amount of tax due. Taxpayer's employer supplied W-2 information stating that it had paid him approximately $46,000 in "State wages, tips, etc." during 2007 and that it had withheld state and local taxes accordingly. Taxpayer objects to that characterization by means of a bogus "Certification of Federally Privileged Status" and a federal form WH-4852 which states that his employer's characterization of the amount of income it paid taxpayer is "HEREBY DISPUTED" because he "received no such 'wages." Based on the aforementioned arguments, taxpayer concludes that the Department now carries the burden of demonstrating that originally filed IT-40 was incorrect.

Taxpayer makes compound errors. Based upon the W-2 information, the Department reasonably concluded that taxpayer's originally filed IT-40 was incorrect; taxpayer did not receive "0" taxable income but received approximately $46,000 in taxable income during 2007. There is absolutely nothing in law, common sense, or practice which supports taxpayer's argument that only those persons who live in federal "enclaves" are subject to state income. Likewise, taxpayer's claim that the Department may only correct arithmetic errors is equally meritless. Under taxpayer's methodology, any taxpayer could claim that his or her starting income was "zero" and that such a declaration would be conclusive and irrefutable proof forever beyond review or correction. The tax code may at times appear arguably cumbersome or complex but nowhere does it countenance such nonsense.

The second error relates to the issue of proof. Taxpayer maintains that the Department "has the burden of producing reasonable and probative information concerning such deficiency." Indiana law provides to the contrary. IC § 6-8.1-5-1(c) provides that, "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."

Taxpayer's third error is his contention that the Department may not correct, alter, or amend his originally filed return. This contention is as equally meritless as the previous. IC § 6-8.1-5-1(b) clearly provides that the Department "shall make a proposed assessment of the amount of the unpaid tax due on the basis of the best information available to the department." The Department's authority to correct an erroneous return neither academic nor philosophic but is a statutory imperative. Faced with the information it had before it at the time it made the decision to do so, the Department was not only authorized but required to make the changes it did.

FINDING

Taxpayer's protest is denied.

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