

**Letter of Findings Numbers: 08-0746R
Individual Income Tax
For the Year 2007**

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ISSUE

I. Individual Income Tax – Imposition.

Authority: IC § 6-3-3-12; IC § 6-8.1-6-3; IC § 21-9; *Nell v. Tracy*, 459 N.E.2d 432 (Ind. Ct. App. 1984).

Taxpayers protest the assessment of individual income tax.

STATEMENT OF FACTS

Taxpayers are a married couple. Prior to December 27, 2007, Taxpayers had not established an account with the Indiana College Choice 529 Plan ("529 Plan"). Taxpayers mailed their account registration and contributed a \$5,000 check to the 529 Plan Administrator. The envelope, which contained the enrollment application and the check, was postmarked December 31, 2007. However, the 529 Plan Administrator did not physically receive the application and check until early 2008.

On Taxpayers' 2007 individual income tax return, Taxpayers claimed a \$1,000 credit based on the above-referenced \$5,000 contribution. The Indiana Department of Revenue ("Department") disallowed the credit and assessed additional tax that would have been due absent the credit. Taxpayers protested the denial of refund and resulting assessment, the Department conducted an administrative hearing, and this Letter of Findings results.

I. Individual Income Tax – Imposition

DISCUSSION

Taxpayers protest the disallowance of the credit for contribution to the 529 Plan. In particular, Taxpayers argue that they made the payment during 2007 and the envelope with the payment was postmarked in 2007; therefore, Taxpayers conclude that they relinquished their rights to the funds in 2007 and were eligible for the credit.

IC § 6-3-3-12(i) states:

A taxpayer is entitled to a credit against the taxpayer's adjusted gross income tax imposed by [IC 6-3-1](#) through [IC 6-3-7](#) for a taxable year equal to the least of the following:

- (1) Twenty percent (20 [percent]) of the amount of the total contributions made by the taxpayer to an account or accounts of a college choice 529 education savings plan during the taxable year.
- (2) One thousand dollars (\$1,000).
- (3) The amount of the taxpayer's adjusted gross income tax imposed by [IC 6-3-1](#) through [IC 6-3-7](#) for the taxable year, reduced by the sum of all credits (as determined without regard to this section) allowed by [IC 6-3-1](#) through [IC 6-3-7](#).

Taxpayers also argue that the Department accepts postmark dates for its own use. However, the Department uses—and the general public can rely upon—postmark dates due to specific statutory authority for specific purposes; the use of postmark dates is not a provision that the Department provides as a general policy.

For instance, IC § 6-8.1-6-3(a)(1) provides for a postmark date for return, payment, and document submission. However, the postmark date is a provision that applies specifically to submissions to the Department; the language does not provide for the reliance on postmark dates for any other purposes. Furthermore, [IC 6-8.1-6-3\(a\)\(2\)](#) provides for an actual delivery date for other methods of submitting information to the Department. Finally, absent a specific statutory provision, postmark dates are not necessarily applicable for determining the date of document or payment. See *Nell v. Tracy*, 459 N.E.2d 432, 435 (Ind. Ct. App. 1984) (applying a day-after-mailing rule absent a specific statute or other rule).

With regards to the 529 Plan, the 529 Plan Administrator for 2007 stated on the 529 statements that it issued: Effective January 1, 2007, Indiana residents can receive a 20 [percent] tax credit, up to \$1,000 per year, on contributions into a CollegeChoice 529 Investment Plan account. **Contributions must be received and deposited into the account by December 31 to receive the tax credit for that year. (Emphasis added)**

Taxpayers state that the 529 Plan Administrator appeared on at least one local television station on December 31, 2008, and the 529 Plan Administrator indicated that mailing on that date would be sufficient to allow crediting to a 529 Plan account for 2008. However, the 529 Plan Administrator for 2008 was not the same as the 529 Plan Administrator for 2007.

The Indiana statutes governing the credit and 529 Plans (IC § 21-9) are silent on when an account is considered established. However, the contribution must be made to an account. In Taxpayers' case, the account did not exist—and could not exist—until the 529 Plan Administrator received Taxpayers' application and payment.

The 529 Plan Administrator did not receive the account application and contribution until early 2008. Thus, the account—the very thing that triggers a 529 Plan contribution—did not exist until 2008 and therefore any contribution to that account could not have been made until 2008. Thus, the Department correctly determined that the contribution was not made until 2008.

FINDING

Taxpayers' protest is denied.

Posted: 05/27/2009 by Legislative Services Agency

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