

**Letter of Findings: 09-0186
Indiana Adjusted Gross Income Tax
For 2007**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The date of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Taxable Income – Individual Income Tax.

Authority: IC§ 6-3-1-3.5(a); IC § 6-8.1-5-1(c); I.R.C. § 61(a); I.R.C. § 3121(a)(1); Sullivan v. U.S. 788 F.2d 813 (1st Cir.1986); United States v. Aitken, 755 F.2d 188 (1st Cir.1985); Lovell v. United States, 755 F.2d 517 (7th Cir. 1984); Olson v. United States, 760 F.2d 1003 (9th Cir.1985); United States v. Buras, 633 F.2d 1356 (9th Cir. 1980); Hyslep v. United States, 765 F.2d 1083 (11th Cir. 1985).

Taxpayer argues that the compensation he receives does not constitute taxable income.

II. Constitutional Authority – Individual Income Tax.

Authority: U.S. Const. amend. XVI; United States v. Collins, 920 F.2d 619 (10th Cir. 1990); Miller v. United States, 868 F.2d 236 (7th Cir. 1989); Parker v. C.I.R. 724 F.2d 469 (5th Cir. 1984).

Taxpayer states that the compensation he receives is not subject to income tax because no "census or apportionment" has been completed.

III. Departmental Authority – Administration.

Authority: Ind. Const. art. 1, § 20; IC § 6-8.1-5-1(c); State Line Elevator v. Bd. Of Tax Comr's, 526 N.E.2d 753 (Ind. Tax Ct. 1988).

Taxpayer objects to the Department of Revenue's conducting an administrative hearing addressing his substantive tax protest because the hearing violates the Indiana Constitution.

IV. Direct Tax – Individual Income Tax.

Authority: Lovell v. U.S., 755 F.2d 517 (7th Cir. 1984)

Taxpayer argues that he is not subject to income tax because Indiana's adjusted gross income tax is an unconstitutional "direct tax."

STATEMENT OF FACTS

Taxpayer filed a 2007 Indiana Income Tax return claiming a refund. The Department of Revenue (Department) denied the refund and taxpayer submitted a protest. The matter was assigned to a Hearing Officer, an administrative hearing was conducted, and this Letter of Findings results. At the hearing, taxpayer set forth various arguments for the proposition that he was not subject to federal or state income taxes. For the sake of convenience, certain of the arguments have been consolidated.

I. Taxable Income – Individual Income Tax.

DISCUSSION

Taxpayer's first argument is that "[his] compensation does not constitute income." In addition, taxpayer argues his "compensation is not subject to income tax because the compensation is received in exchange for labor and there is no 'profit.'" Taxpayer further argues that his "compensation is not subject to income tax because he is not exercising a state privilege."

Under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." The Department's decision denying the refund is presumptively valid.

In effect, taxpayer insists that the compensation paid to him is not taxable because the Internal Revenue Code authorizes a tax on wages earned from employment in government and not on private sector earnings. Indiana, of course, "piggybacks" on the federal tax rules. IC § 6-3-1-3.5(a) states that "When used in this article, the term 'adjusted gross income' shall mean the following... In the case of all individuals, 'adjusted gross income' (as defined in Section 62 of the Internal Revenue Code)...."

Taxpayer's interpretation of the code is fallacious. Taxpayer has not denied that he receives "compensation" from his employer but insists that this compensation is neither "income" nor "wages." However, I.R.C. § 3121(a)(1) plainly states that, "For purposes of this chapter the term 'wages' means all remuneration for employment...." Nonetheless, whether the amounts received by the taxpayer are "wages" is finally irrelevant because for income tax purposes "gross income means all income from whatever source derived, including (but not limited to)... (1) compensation for services." I.R.C. § 61(a). See Lovell v. United States, 755 F.2d 517, 519 (7th Cir. 1984) (money received in compensation for labor is taxable).

As noted by the court in, Sullivan v. U.S. 788 F.2d 813, 815 (1st Cir. 1986) the courts which have addressed the taxpayer's arguments have uniformly rejected as frivolous the arguments that compensation for labor is not taxable income. (citing) Hyslep v. United States, 765 F.2d 1083, 1084 (11th Cir.1985); Lovell, 755 F.2d at 519; cf.

United States v. Aitken, 755 F.2d 188 (1st Cir.1985), or that a person is liable for tax only if he benefits from a governmental privilege. See, e.g., Olson v. United States, 760 F.2d 1003, 1005 (9th Cir.1985); Lovell 755 F.2d at 519; United States v. Buras, 633 F.2d 1356, 1361 (9th Cir.1980) (noting that Sixteenth Amendment is broad enough to grant Congress the power to collect an income tax regardless of the source of the taxpayer's income.)

AUTHORITY

Taxpayer's protest is denied.

II. Constitutional Authority – Individual Income Tax.

DISCUSSION

Taxpayer maintains that Indiana's income tax violates the United States Constitution because there has been no apportionment of the total, potential liability across state lines. According to taxpayer, before any income tax can be imposed, the governing authority must determine the amount of potential tax liability – either federal or state – and then apportion that liability, by means of a census, equally among all federal or state residents.

Taxpayer's argument is erroneous. As stated in the U.S. Const. amend. XVI, "The Congress shall have power to lay and collect taxes on income, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."

Taxpayer is swimming upstream on this issue. Every court which has considered the issue has either implicitly or explicitly held that the Sixteenth Amendment authorizes a non-apportioned direct income tax on United States citizens and that the federal laws as applied are valid. In United States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990) the court cited to Brushaber v. Union Pac. R.R., 240 U.S. 1, 12, 19 (1916) and noted that the United States Supreme Court has recognized that the "sixteenth amendment authorizes a direct nonapportioned tax upon United States Citizens throughout the nation." As the court held in Parker v. C.I.R., 724 F.2d 469, 471 (5th 1984):

The authority conferred upon Congress by § 8 of article 1 "to lay and collect taxes, duties, imposts and excises" is exhaustive and embraces every conceivable power of taxation has never been questioned, or, if it has, has been so often authoritatively declared as to render it necessary only to state the doctrine. And it has also never been questioned from the foundation... that there was authority given... to lay and collect income taxes. Brushaber v. Union Pacific Ry. Co., 240 U.S. 1, 12-13. The sixteenth amendment merely eliminates the requirement that the direct income tax be apportioned among the states. The immediate recognition of the validity of the sixteenth amendment continues in an unbroken line.

Arguments to the contrary – such as that posed by taxpayer – have been uniformly rejected as "patently frivolous." Miller v. United States, 868 F.2d 236, 241 (7th Cir. 1989).

FINDING

Taxpayer's protest is denied.

III. Departmental Authority – Administration.

DISCUSSION

Taxpayer argues that the Department of Revenue is not entitled to conduct a hearing addressing his substantive objections to the assessment of income tax because the Indiana Legislature illegally bestowed judicial powers on the Department and that an extra-legal quasi-judicial trial has been conducted by the Department without benefit of jury.

In support of his argument, taxpayer cites to Ind. Const. art. 1, § 20 which states in its entirety that, "In all civil cases, the right of trial by jury shall remain inviolate." Presumably, taxpayer wishes to have his administrative protest conducted before a civil court and that a jury would decide the issues. Taxpayer errs. As noted in State Line Elevator v. Bd. of Tax Comr's, 526 N.E.2d 753, 754 (Ind. Tax Ct. 1988),

The Indiana Constitution guarantees the right to a jury trial only in those actions triable by jury at common law prior to June 18, 1852. Estate of Ballard v. Ballard (1982), Ind. App., 434 N.E.2d 136. Thus, the right to a trial by jury does not include a statutory proceeding.

IC § 6-8.1-5-1(c) requires that the Department conduct an administrative hearing when and if a taxpayer challenges a proposed assessment. That portion of the law states that, "If the person files a protest and requests a hearing on the protest, the department shall: (1) set the hearing at the department's earliest convenience time; and (2) notify the person by United States mail of the time, date, and location of the hearing."

The foregoing provision makes no mention of a "jury" and under the Indiana Constitution none is required. If taxpayer believes that the legislature overstepped its authority in requiring that the Department conduct a hearing on protested tax issues, then taxpayer's remedy lies elsewhere than within the administrative process itself.

FINDING

Taxpayer's protest is denied.

IV. Direct Tax – Individual Income Tax.

DISCUSSION

According to taxpayer, the compensation he receives from his employer is not subject to income tax "because the 16th amendment conferred no new power of taxation so all direct taxes must follow the Article 1 Section 9 of US Constitution... exchanging labor for money is a right not a privilege."

Taxpayer's argument is meritless. There is not one single court which has ever expressed an opinion

suggesting that a federal or state tax on income from employment was a "direct tax" that must be apportioned. Not one. Never. To the contrary, taxpayer's specious argument has been rejected by every court which has addressed the issue. For example in *Lovell v. U.S.* 755 F.2d 517, 519 (7th Cir.1984), the court rejected the taxpayer's specific argument;

Plaintiffs also contend that the Constitution prohibits imposition of a direct tax without apportionment. They are wrong; it does not.

In addition, the court noted that monetary sanctions were appropriate when the petitioners in that case "put forth frivolous arguments in bad faith." *Id.*

FINDING

Taxpayer's protest is denied.

SUMMARY

Each and every portion of taxpayer's protest is denied in its entirety.

Posted: 06/24/2009 by Legislative Services Agency

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