DEPARTMENT OF STATE REVENUE

01-20090379.LOF

Letter of Findings Number: 09-0379
Individual Income Tax
For the Year 2007

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ISSUE

I**. Individual Income Tax – Imposition.**

Authority: IC § 6-3-3-12; IC § 6-8.1-5-1; 45 IAC 15-5-2.

Taxpayers protest the assessment of individual income tax.

STATEMENT OF FACTS

Taxpayer is an individual. Prior to December 31, 2007, Taxpayer had not established an account with the Indiana College Choice 529 Plan ("529 Plan"). Taxpayer mailed his account registration and contributed two $2,500 checks to the 529 Plan Administrator. However, the 529 Plan Administrator did not post the checks until early 2008.

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

I. Individual Income Tax – Imposition.

DISCUSSION

Taxpayer protests the disallowance of the credit for contribution to the 529 Plan. In particular, Taxpayer argues that he sent the package containing the plan applications and contributions during 2007; therefore, Taxpayer concludes that he relinquished his rights to the funds in 2007 and was 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.

Taxpayer argues that he sent the application and contributions to the plan on December 31, 2007. Taxpayer also argues that he attempted to comply with the year-end deadline for contributions by actually visiting a branch of the 529 Plan Administrator and leaving the paperwork at that branch; however, the branch informed Taxpayer that he had to send the application and payment via mail. Taxpayer further raises issues regarding the fact that the investments in the account declined while he was denied the credit, resulting in losses upon which Taxpayer cannot claim a loss.

While Taxpayer presents a compelling equitable argument, the Indiana Department of Revenue ("Department") is constrained to enforce the laws based on the facts presented and the resulting legal consequences of those facts. Under the facts most favorable to Taxpayer, Taxpayer sent the application and payments via UPS Next Day Air on December 31, 2007. The package could not have been received by the 529 Plan Administrator prior to January 2, 2008. Thus, the contributions were made in 2008 rather than 2007. While Taxpayer certainly attempted to make his contributions in 2007, the actual date of the contributions was no earlier than January 2, 2008, and thus the Department properly denied Taxpayer's claimed credit.

Taxpayer also argued that the Department used an erroneous deadline for issuing the proposed assessment, even though Taxpayer filed within the proper statutory deadline. In particular, Taxpayer noted that 45 IAC 15-5-2(a) provided for a sixty-day deadline for protests after the issuance of a proposed assessment, while the proposed assessment itself provided for a forty-five day protest period. The regulation in question was promulgated in 1987, when the statutory protest period was in fact sixty days. However, in 2006, IC § 6-8.1-5-1(d) was changed to a forty-five day protest period, while the underlying regulation has not been updated. Thus, the proposed assessment listed the proper time period for protesting a proposed assessment.

FINDING

Taxpayer's protest is denied.

Posted: 08/26/2009 by Legislative Services Agency
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