

**Letter of Findings: 09-0191R**  
**Indiana Individual Income Tax**  
**For the Years 2005, 2006, and 2007**

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**ISSUES**

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

**Authority:** IC § 6-3-2-1; IC § 6-3-1-12; IC § 6-3-1-3.5; IC § 6-8.1-5-1; [45 IAC 2.2-5-8](#); [45 IAC 3.1-1-1](#); 26 U.S.C.S. § 61; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessments on his retirement pension from the State of Louisiana.

**II. Tax Administration – Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer, a college professor, has been receiving pension payments from his former employer, State of Louisiana, after Taxpayer retired from his teaching position in Louisiana. In August 2003, Taxpayer relocated to Indiana to begin a new teaching job while his spouse remained in Louisiana to complete the transition.

Claiming his retirement pension from the State of Louisiana is exempt from Indiana income tax, Taxpayer filed 2005, 2006, and 2007 Indiana income tax returns, excluding his Louisiana pension from Indiana income tax computation. The Indiana Department of Revenue ("Department") concluded that Taxpayer's Louisiana pension was not exempt from Indiana individual income tax and, therefore, assessed additional income tax, interest, and penalty. Taxpayer paid the assessed 2005 and 2006 tax liabilities and subsequently filed a claim for refund, but Taxpayer did not pay the assessed 2007 tax liability. Taxpayer protested the Department's proposed assessments for these years. A hearing was held. This Letter of Finding ensues and addresses the same legal issues raised by Taxpayer for these years. Additional facts will be provided as necessary.

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

**DISCUSSION**

The Department assessed additional income tax, interest, and penalty on Taxpayer's Louisiana pension because the Department concluded that Taxpayer was an Indiana resident and the pension was income pursuant to the Internal Revenue Code and Indiana statutes. However, Taxpayer claimed that his Louisiana pension was exempt from Indiana income tax according to Louisiana statutes and U.S. constitutional principles.

All tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

IC § 6-3-2-1(a) states:

Each taxable year, a tax at the rate of three and four-tenths percent (3.4 [percent]) of adjusted gross income is imposed upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person.

IC § 6-3-1-12 states:

The term "resident" includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state.

In this instance, Taxpayer first claimed that he maintained residence in Louisiana until September 2006.

Taxpayer thus argued that his pension payments were excluded from Indiana individual income tax for 2005 and 2006 because he was a "part-year" resident in Indiana and his pension payments were income from Louisiana. Taxpayer further argued that although he became an Indiana resident after September 2006, his pension was exempt from state income tax under Louisiana statutes. Thus, Taxpayer argued that Indiana should apply Louisiana laws, exempting Taxpayer's pension from Indiana individual income tax, based on U.S. constitutional principles.

Here, in the absence of Taxpayer's Louisiana income tax return filings, Taxpayer's documentation showed that he designated his Indiana residence as his permanent address for the 2005, 2006, and 2007, federal and Indiana tax return filings. Taxpayer also took certain deductions which were only available to Indiana residents for these years in question. Specifically, in his IT-40PNRs, Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return Forms, Taxpayer stated that he lived in another state from May 15 to August 15, totaling ninety-two days. For each of the years in question, Taxpayer's documentation clearly showed that Taxpayer had

lived 273 days in Indiana, i.e., more than the 183 days baseline for full-year Indiana residency. Therefore, Taxpayer was a full-year Indiana resident for these years for Indiana Individual Income Tax purposes according to IC § 6-3-1-12(b).

Taxpayer has invited the Department to interpret the U.S. Constitution and apply Louisiana law in his favor. First, a state, such as Louisiana or Indiana, has its own sovereignty and may exercise its power to tax or not to tax its residents independently of each other's laws. In this instance, Louisiana has its own reasons for exempting Taxpayer's state pension from income tax, such as, for example, to encourage retirees to stay in Louisiana. Indiana's laws do not provide this exemption. Second, the Department must respectfully decline Taxpayer's invitation to address federal constitutional issues. For one, Taxpayer does not present specific constitutional arguments in support of his protest. However, even if Taxpayer had presented such arguments, the administrative hearing is not a proper forum to address Taxpayer's concerns regarding federal constitutional principles.

In this instance, Indiana statutes apply because Taxpayer was an Indiana resident during 2005, 2006, and 2007. The Indiana income tax rules piggyback on the federal income tax regulations. IC § 6-3-1-3.5. [45 IAC 3.1-1-1](#) further provides:

For individuals, "Adjusted Gross Income" is "Adjusted Gross Income" as defined in Internal Revenue Code § 62 modified as follows:

- (1) Begin with gross income as defined in section 61 of the Internal Revenue Code.
- (2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.
- (3) Make all modifications required by [IC 6-3-1-3.5\(a\)](#).

Additionally, 26 U.S.C.S. § 61(a) states:

Except as otherwise provided in this subtitle [26 U.S.C.S. § 1 et seq.], gross income means all income from whatever source derived, including (but not limited to) the following items:

- (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
- (2) Gross income derived from business;
- (3) Gains derived from dealings in property;
- (4) Interest;
- (5) Rents;
- (6) Royalties;
- (7) Dividends;
- (8) Alimony and separate maintenance payments;
- (9) Annuities;
- (10) Income from life insurance and endowment contracts;
- (11) **Pensions.... (Emphasis added).**

As mentioned above, Taxpayer was full-year Indiana resident for these years and Indiana laws apply to Taxpayer. Pursuant to 26 U.S.C.S. § 61(a)(11), Taxpayer's pension was income for these years and, therefore, was his taxable income for Indiana individual income tax purposes. In the absence of federal and Indiana statutory exemptions, Taxpayer's pension was his income and subject to Indiana income tax.

#### FINDING

Taxpayer's protest is respectfully denied.

## II. Tax Administration – Penalty.

#### DISCUSSION

Taxpayer also protests the imposition of the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1, the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a tax return;
- (2) fails to pay the full amount of tax shown on the tax return;
- (3) fails to remit in a timely manner the tax held in trust for Indiana (e.g., a sales tax); or
- (4) fails to pay a tax deficiency determined by the Department to be owed by a taxpayer.

[45 IAC 15-11-2\(b\)](#) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2\(c\)](#), in part, as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or

failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has provided sufficient documentation establishing that its failure to timely remit tax was due to reasonable cause and not due to negligence.

**FINDING**

Taxpayer's protest on the imposition of the negligence penalty is sustained.

**SUMMARY**

For the reasons discussed above, Taxpayer's protest on the imposition of income tax is respectfully denied. However, Taxpayer's protest on the negligence penalty is sustained.

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