

**Letter of Findings Number: 09-0534**  
**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.

Taxpayers protest the assessment of individual income tax.

**STATEMENT OF FACTS**

Taxpayers are a married couple. Prior to December 13, 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. However, the 529 Plan Administrator did not post the checks until early 2008.

On Taxpayers' 2007 individual income tax return, Taxpayers claimed a \$1,000 credit based on the above-referenced contribution. The Indiana Department of Revenue ("Department") disallowed the credit. Taxpayers protested the credit disallowance, 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; therefore, Taxpayers conclude that they relinquished their rights to the funds in 2007 and were eligible for the credit.

Under IC § 6-8.1-5-1(c), a taxpayer against whom a proposed assessment has been issued bears the burden of demonstrating that a proposed assessment is incorrect. Thus, Taxpayers must demonstrate that the contribution was made in calendar year 2007.

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 have provided sufficient information to conclude that his contribution was in fact made to an account in calendar year 2007, and therefore Taxpayers were eligible for the credit that they claimed for tax year 2007.

**FINDING**

Taxpayers' protest is sustained.

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