

**Letter of Findings: 01-20130250**  
**Individual Income Tax**  
**For the Years 2009-2011**

**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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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 publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Income Tax – Imposition.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-5-4; IC § 6-3-2-1; IC § 6-3-1-3.5; [45 IAC 3.1-1-2](#); [45 IAC 3.1-1-7](#); [45 IAC 3.1-1-66](#); I.R.C. § 1366.

Taxpayer protests the assessment of additional income tax.

**STATEMENT OF FACTS**

Taxpayer is an individual who is one of the shareholders of two Indiana S corporations. One of the S corporations owns a gas station and convenience store located in Indiana. The Indiana Department of Revenue ("Department") performed sales and income tax audits of the S corporations for the 2009, 2010, and 2011 tax years. The second S Corporation owns two convenience store locations that are attached to gas stations. The Department performed sales and income tax audits of this S corporation for the 2010 and 2011 tax years. As a shareholder of the S corporations, those income tax assessments flow through to Taxpayer. The Department reviewed the S corporations' business records. The Department determined that the S corporations' records were inadequate. Taxpayer did not have daily cash register Z-tapes, original sales records, expense reports, and/or monthly sales recaps.

As a result of the Department's audits, the Department issued proposed assessments of additional sales tax based on the "best information available." The Department determined that the S-corporations had not collected and/or reported the proper amount of sales tax on its sales of diesel fuel, gasoline, and convenience store items. Pursuant to IC § 6-8.1-5-1 and [45 IAC 2.2-6-8](#), sales tax was assessed on these additional taxable sales. The S corporations protested the sales tax assessments. For further information relating to either of the sales tax assessments, please refer to Letters of Findings 04-20130028 and 04-20130228, in which each of the S Corporations were denied in part and sustained in part subject to the results of the supplemental audits.

The Department also made adjustments to each of the S corporation's adjusted gross income based upon the additional taxable sales adjustments. Since these income tax assessments flow through to Taxpayer as a shareholder in the S corporations, the Department issued proposed assessments to Taxpayer for the additional adjusted gross income tax on his share of each of the S corporation's income, as well as penalty and interest. Taxpayer protested the income tax assessments pending resolution of the related sales tax investigation (See Letters of Findings 04-20130028 and 04-20130228). This Letter of Findings ensues. Additional facts will be provided as necessary.

**I. Income Tax – Imposition.**

**DISCUSSION**

Indiana imposes an adjusted gross income tax on all residents. IC § 6-3-2-1. A taxpayer's Indiana income is determined by starting with the federal income and making certain adjustments. IC § 6-3-1-3.5. Income from an S corporation flows through to the individual shareholders' personal income and is reported by the shareholders on their personal income tax returns. See I.R.C. § 1366. See also [45 IAC 3.1-1-66](#); [45 IAC 3.1-1-2\(14\)](#); [45 IAC 3.1-1-7\(6\)](#).

If the Department reasonably believes that a person has not reported the proper amount of tax due, the Department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the Department. IC § 6-8.1-5-1(a). Every person subject to a listed tax must keep books and records so that the Department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. IC § 6-8.1-5-4(a). A person must allow inspection of the books and records and returns by the Department or its authorized agents at all reasonable times. IC § 6-8.1-5-4(c). The notice of proposed assessment is prima facie evidence that the Department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is incorrect rests with the person against whom the proposed assessment is made. IC § 6-8.1-5-1(c).

Taxpayer was assessed additional income tax based upon the adjustments made to each of the S corporation's adjusted gross income from the "additional taxable sales" determinations made in each of the S corporation's sales and use tax audit. The S corporations protested the sales tax assessments. Please refer to Letters of Findings 04-20130028 and 04-20130228 for further information relating to the S corporations' sales tax protests. Since the S corporations' protests were denied in part and sustained in part subject to the results of a supplemental audit, the amount of "additional taxable sales" may be adjusted by the results of the supplemental

audits. If the "additional taxable sales" in each of the S corporation's sales tax audits are adjusted by the results of the supplemental audits, then the "additional taxable sales" in each of the S corporation's income tax audits should also be adjusted.

Accordingly, Taxpayer's protest of the imposition of additional individual income tax—based upon each S corporation's additional income from the "additional taxable sales" determined in the audits—is also sustained subject to the results of each of the S corporation's sales tax supplemental audits. However, Taxpayer's protest is denied to the extent that the supplemental audits of the additional documentation do not result in the audit division making an adjustment to the "additional taxable sales" of the S corporations.

**FINDING**

Taxpayer's protest is denied in part and sustained in part subject to the results of the supplemental audits.

*Posted: 11/27/2013 by Legislative Services Agency*  
An [html](#) version of this document.