DEPARTMENT OF STATE REVENUE

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Letter of Findings Number: 01-20130517
Individual Income Tax and Penalty
For Tax Years 2011 and 2012

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ISSUES

I. Individual Income Tax–County Option Income Tax.

Authority: IC § 6-8.1-5-1(c); IC § 6-3.5-6-1; IC § 6-3.5-6-8(d); IC § 6-3.5-6-20; IC § 6-3.5-6-23(a); Income Tax Information Bulletin 32 (July 2008); Departmental Notice 1 (December 1, 2010); Departmental Notice 1 (December 1, 2011); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment of county option income tax for the tax years 2011 and 2012.

II. Tax Administration–Penalty.

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of penalties.

STATEMENT OF FACTS

Taxpayer is an individual. He maintains a home in Marion County, Indiana, but works in Illinois. Taxpayer filed Indiana individual income tax return for tax year 2011, failing to compute Marion County option income tax, resulting in an assessment for Marion County option income tax. Taxpayer states that he wrote a letter to the Indiana Department of Revenue ("Department") in which he disagreed with the proposed assessment explaining that he works in Illinois. Later, he received a letter from the Department stating that his "recent explanation and/or payment with respect to the specific liability number referenced above, is satisfactory," and requiring "[n]o further action . . ." on the part of the Taxpayer. Taxpayer explained that he relied on this outcome to file his Indiana individual income tax return for 2012 without computing the Marion County option income tax.

The Department adjusted the 2011 return and issued a proposed assessment for Marion County option income tax for both 2011 and 2012 tax years. Taxpayer protests the assessment for the Marion County option income tax for both years. An administrative hearing was held and this Letter of Findings results.

I. Individual Income Tax–County Option Income Tax.

DISCUSSION

The Department will consider whether the assessments of Marion County option income tax for tax years 2011 and 2012 are correct.

The Department's proposed assessment of tax is presumed to be valid and "the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." 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). Here, the Department's proposed assessments of county option income tax are presumed to be valid, and Taxpayer bears the burden of proving that such proposed assessments are wrong.

The county option income tax is calculated on the adjusted gross income of an individual who maintains a home in the county on January 1 of the tax year. IC § 6-3.5-6-1; IC § 6-3.5-6-8(a); IC § 6-3.5-6-20(a)(1) and (b); Income Tax Information Bulletin 32 (July 2008), 20080827 Ind. Reg. 045080659NRA. A county taxpayer is entitled to a credit against the county option income tax if the county taxpayer is "liable for an income tax imposed by a county, city, town, or other local governmental entity located outside of Indiana . . . ." IC § 6-3.5-6-23(a). Otherwise, the county option income tax is calculated on the adjusted gross income of the county taxpayer regardless of where the income is earned.

Marion County imposed a county option income tax during the 2011 and 2012 tax years. Departmental Notice 1 (December 1, 2010); Departmental Notice 1 (December 1, 2011). Taxpayer stated that he maintains a home in Marion County, and has not provided any evidence that he did not do so on January 1, 2011, or January 1, 2012. Additionally, Taxpayer has not provided any evidence that he was liable for an income tax imposed by a local government entity located outside Indiana. Therefore, the Marion County option income tax is calculated on Taxpayer's adjusted gross income wherever earned. Since Taxpayer has failed to prove the proposed assessments wrong, as required by IC § 6-8.1-5-1(c), the Department's assessments for unpaid Marion County option income tax for the tax years 2011 and 2012 are correct and Taxpayer's protest is denied.

FINDING

Taxpayer's protest of the Department's assessments for unpaid Marion County option income tax for the tax years 2011 and 2012 is denied.

II. Tax Administration–Penalty.

DISCUSSION

The Department imposed a penalty on the failure to remit the Marion County option income tax in both 2011 and 2012 tax years.

A taxpayer who "incurs, upon examination by the department, a deficiency that is due to negligence . . . is subject to a penalty." IC § 6-8.1-10-2.1(a)(3). The Department shall waive the penalty if the taxpayer demonstrates that the failure to pay the outstanding taxes "was due to reasonable cause and not due to willful neglect." IC § 6-8.1-10-2.1(d); see also 45 IAC 15-11-2. The taxpayer may demonstrate reasonable cause by showing affirmatively that it used "ordinary business care and prudence" in not paying the outstanding taxes. Whether a taxpayer demonstrates reasonable cause for penalty purposes is a fact-sensitive question and determined on a case-by-case basis. 45 IAC 15-11-2(b) and (c).

Taxpayer's failure to pay the outstanding county option income tax for tax years 2011 and 2012 was due to reasonable cause and not willful neglect. The Department waives the penalties imposed on the proposed assessments of Marion County option income tax for the tax years 2011 and 2012.

FINDING

Taxpayer's protest of the penalties imposed on the assessments of county option income tax is sustained.

SUMMARY

Taxpayer's protest is denied regarding the assessment of county option income tax. Taxpayer's protest of the penalties imposed is sustained.

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