

**Letter of Findings Number: 01-20130105
Individual Income Tax
For the Year 2009**

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ISSUE

I. Individual Income Tax – Imposition.

Authority: [IC 6-3-1-3.5](#); [IC 6-8.1-5-1](#).

Taxpayers protest the imposition of Indiana individual income tax.

STATEMENT OF FACTS

Taxpayers are individuals residing in Indiana. In 2009, Taxpayers filed Indiana and federal income tax returns reporting identical adjusted gross income amounts. Later, the Internal Revenue Service determined that Taxpayers had unreported gambling income and equal offsetting losses. The result was that the gross gambling income was part of federal adjusted gross income. However, the losses were itemized deductions not deductible in determining federal adjusted gross income. The resulting change in federal adjusted gross income resulted in Taxpayers' Indiana adjusted gross income being redetermined to reflect the revised federal adjusted gross income. The Indiana Department of Revenue ("Department") assessed Taxpayers additional tax, which Taxpayers protested. The Department conducted an administrative hearing and this Letter of Findings results. Additional facts will be supplied as necessary.

I. Individual Income Tax – Imposition.

DISCUSSION

Taxpayers protest the imposition of individual income tax for 2009. The issue is whether Taxpayers' Indiana adjusted gross income was properly determined.

[IC 6-3-1-3.5](#)(a) provides that "In the case of all individuals, 'adjusted gross income' (as defined in Section 62 of the Internal Revenue Code), modified as follows: [List of modifications]."

[IC 6-8.1-5-1](#)(c) provides in relevant part that "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 wrong rests with the person against whom the proposed assessment is made."

In this particular case, Taxpayers filed a refund claim with the Internal Revenue Service regarding the Internal Revenue Service's determination of federal adjusted gross income. The Internal Revenue Service reviewed Taxpayers' refund claim and adjusted Taxpayers' federal adjusted gross income to the originally-reported number. Based on the Internal Revenue Service's review and adjustments, Taxpayers have provided sufficient legal and factual grounds to prove that the Department's proposed assessment was incorrect. However, if Taxpayers are assessed for additional federal adjusted gross income tax by the Internal Revenue Service, the Department can still assess additional Indiana adjusted gross income tax based on those federal adjustments.

FINDING

Taxpayer's protest is sustained.

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