DEPARTMENT OF STATE REVENUE

01-20130581.LOF

Letter of Findings: 01-20130581
Individual Income Tax
For the Year 2010

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUE

I. Individual Income Tax – Retirement Income.

Authority: IC § 6-3-2-1(a); IC § 6-3-1-3.5; IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); 45 IAC 3.1-1-1.

Taxpayer argues that he should not be required to pay individual income tax on money received as beneficiary of a private employer pension plan.

STATEMENT OF FACTS

Taxpayer is an Indiana retiree. Taxpayer receives Social Security benefits. In addition, Taxpayer receives retirement income from a private pension plan. The Department of Revenue ("Department") issued a proposed assessment on the ground that Taxpayer had not paid income tax on the pension benefits. Taxpayer submitted a protest arguing that he was not required to pay the tax. An administrative hearing was conducted during which Taxpayer explained the basis for the protest. This Letter of Findings results.

I. Individual Income Tax – Retirement Income.

DISCUSSION

Taxpayer maintains that he should not be required to pay income tax on his pension plan income.

Indiana imposes tax on the adjusted gross income of individuals. IC § 6-3-2-1(a) provides:

> Each taxable year, a tax at the following rate 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 § 6-3-1-3.5 states as follows: "When used in IC 6-3, the term 'adjusted gross income' shall mean the following: (a) In the case of all individuals 'adjusted gross income' (as defined in Section 62 of the Internal Revenue Code) . . . ." Thereafter, the Indiana statute defines specific addbacks and deductions peculiar to Indiana which modify the federal adjusted gross income amount. The Department's own regulation restates this formulation. 45 IAC 3.1-1-1 defines individual adjusted gross income as follows:

> Adjusted Gross Income for Individuals Defined. For Individual, "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).

Both the statute, IC § 6-3-1-3.5, and the accompanying regulation, 45 IAC 3.1-1-1, require an Indiana taxpayer use the federal adjusted gross income calculation – as determined under I.R.C. § 62 – as the starting point for determining that taxpayer's Indiana adjusted gross income.

Taxpayer argues that his former employer improperly classified him as eligible for a "Non Qualified Managerial Annuity" and that his benefit provider continues to classify the income from the annuity as taxable under federal law. Taxpayer explains that he was "a union member with recall rights back to work" and that he "never worked in management for [former employer]." However, Taxpayer does not fully explain the disputed classification's tax implications.

Taxpayer seeks the following remedies from the Department:

Require his former employer to reclassify him as having previously worked in a non-management position;

Force his former employer to pay tax on any future pension benefits;

Refund to him all taxes previously withheld on past pension benefits.

As with any protest of a tax assessment, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(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 wrong rests with the person against whom the proposed assessment is made." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

In this case, Taxpayer was unable to establish that the pension benefits he receives are exempt from Indiana individual income tax or that the Department erred in assessing tax on income as specifically required under IC § 6-3-1-3.5 and 45 IAC 3.1-1-1. In addition, Taxpayer is seeking relief from the Department which it is unable to

provide. The Department has no authority to require his former employee to reclassify his employment status. In addition, the Department has no grounds to force his former employer to pay – not withhold – taxes on future pension benefits. Further, without further information, the Department finds no basis to refund to him taxes paid on past retirement benefits.

Although the Department recognizes that Taxpayer has had a long-standing disagreement with both his former employer and his pension benefit provider, the Department has no basis upon which to grant the relief sought.

FINDING

Taxpayer's protest is respectfully denied.

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