

DEPARTMENT OF STATE REVENUE

01-20140282.LOF

Letter of Findings Number: 01-20140282
Individual Income Tax
For Tax Years 2009, 2010, 2011, 2012 and 2013

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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUE

I. Adjusted Gross Income Tax - Liability.

Authority: I.R.C. §1361; I.R.C. §1366; IC § 6-3-1-10; IC § 6-3-2-1(b); IC § 6-3-2-2.8; 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); [45 IAC 3.1-1-66](#).

Taxpayer protests the imposition of additional income tax resulting from an adjustment made because of a related sales and use tax audit.

STATEMENT OF FACTS

Taxpayer is a shareholder of an S corporation ("S-Corp.") that operates as a convenience store and gas station. The Indiana Department of Revenue ("Department") conducted an audit of S-Corp. and issued proposed assessments of additional sales and use tax. The outcome of the sales and use tax audit resulted in an adjustment of Taxpayer's income as a shareholder of S-Corp. Therefore, the Department proposed assessments of additional individual income tax plus penalty and interest. Taxpayer protests the proposed assessments of base income tax resulting from the audit of S-Corp. An administrative hearing was held. This Letter of Findings addresses Taxpayer's protest of the proposed assessment of additional individual income tax. The S-Corp.'s protest of the Department's proposed assessment of additional sales and use taxes is addressed in Letter of Findings 04-20140273. Additional facts will be supplied as necessary.

I. Adjusted Gross Income Tax - Liability.

DISCUSSION

Taxpayer protests the imposition of additional income tax as a result of adjustments made by the Department in a related sales and use tax audit. All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). The issue is whether Taxpayer met its burden to prove the assessment is incorrect.

Except in specific circumstances, corporations electing subchapter S status pursuant to section 1361 of the Internal Revenue Code ("S corporations") are exempt from the Indiana adjusted gross income tax. I.R.C. §1361, IC § 6-3-2-2.8, [45 IAC 3.1-1-66](#); see also IC § 6-3-1-10, IC § 6-3-2-1(b). For Indiana income tax purposes, the adjusted gross income of an S corporation is passed through to its shareholders, and "shareholders are taxed on their distributive shares of income at the individual income tax rate." [45 IAC 3.1-1-66](#); see also I.R.C. §1366. Adjustments made to the income of an S corporation would naturally result in adjustments to the income of its shareholders. Id.

Taxpayer is a shareholder in S-Corp. In a related audit, the Department determined that S-Corp. had unreported taxable sales. The adjustment to S-Corp.'s taxable sales resulted in increased gross receipts to S-Corp, and the increase to S-Corp.'s income flows through to Taxpayer as a shareholder. Therefore, the Department adjusted Taxpayer's individual income to reflect the additional income resulting from the unreported taxable sales.

S-Corp. protested the proposed assessment of additional sales tax resulting from the determination that it had additional unreported taxable sales. However, pursuant to Letter of Findings 04-20140273, the Department denied S-Corp.'s protest. The adjustments made to S-Corp.'s taxable sales were not proven to be incorrect. Therefore, Taxpayer's protest of the additional individual income tax based on the S-Corp.'s additional gross receipts is respectfully denied.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 10/29/2014 by Legislative Services Agency
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