

DEPARTMENT OF STATE REVENUE

01-20140348.LOF

Letter of Findings Number: 01-20140348
Individual Income Tax
For Tax Year 2010, 2011, and 2012

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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.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

Authority: IC § 6-3-1-3.5; IC § 6-8.1-5-1; IC § 6-8.1-5-4; I.R.C. § 62; I.R.C. § 162; Treas. Reg. § 1.6001-1; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); IRS Pub. 463.

Taxpayer protests the disallowance of car expense deductions it calculated using the standard mileage rate.

STATEMENT OF FACTS

Taxpayer is a sole proprietor operating as Company. Company is in the business of lawn mowing, landscaping, lot maintenance, and snow removal. Taxpayer used the standard mileage rate to calculate its car expense deduction. During an audit, the Indiana Department of Revenue (the "Department") disallowed the car expense deduction calculated using the standard mileage rate. Instead, the Department calculated Taxpayer's car expense deduction based on Taxpayer's actual expenses. The Department proposed assessments for the resulting additional income tax for the tax years 2010, 2011, and 2012. Taxpayer protests the disallowance of the deductions for car expenses calculated using the standard mileage rate. An administrative hearing was held, and this Letter of Findings results. Additional facts will be provided as needed.

I. Adjusted Gross Income Tax - Standard Mileage Rate.**DISCUSSION**

Taxpayer protests the Department's disallowance of Taxpayer's use of the standard mileage rate to calculate its car expense deduction. 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.

For individuals, Indiana defines the term adjusted gross income "as [it is] defined in Section 62 of the Internal Revenue Code" with Indiana-specific modifications. IC § 6-3-1-3.5(a). Section 62 of the Internal Revenue Code defines adjusted gross income as "gross income minus [specific] deductions" which includes "ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." I.R.C. § 62(a); I.R.C. § 162. If an individual uses a car for business purposes, the taxpayer may deduct car expenses using one of two methods to calculate the deductible expenses: (1) standard mileage rate, or (2) actual car expenses. IRS Pub. 463, 2010 WL 5855406; 2011 WL 7156489; 2012 WL 7515453. Where a taxpayer uses five or more cars at the same time for business purposes, it cannot use the standard mileage rate to calculate its deduction for car expenses. *Id.* A taxpayer who is precluded from using the standard mileage rate because it uses five or more cars at the same time for business purposes may still deduct its actual car expenses. *Id.* Actual car expenses include depreciation licenses, gas, oil, tolls, lease payments, insurance, garage rent, parking fees, registration fees, repairs, and tires. *Id.*

In general, "any person subject to tax under subtitle A of the Code . . . shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information." Treas. Reg. § 1.6001-1 (emphasis added). For Indiana tax purposes, "[e]very 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). If the Department cannot determine a taxpayer's liability and the Department reasonably believes that the taxpayer has not reported the proper amount of tax due, the

Department shall propose an assessment of unpaid tax based on the best information available to the Department. IC § 6-8.1-5-1(b).

In this case, Taxpayer is a sole proprietor and its tax liability is calculated at the individual level. Taxpayer may deduct car expenses that are "ordinary and necessary expenses paid or incurred during the taxable year in carrying on [its] trade or business." I.R.C. § 62(a); I.R.C. § 162. The audit report indicates that Taxpayer operated five vehicles for business purposes at the same time during the audit period making it ineligible to use the standard mileage rate to calculate its deductible car expenses. Taxpayer states that the 2009 GMC Truck is a "personal vehicle[] used only for [Taxpayer's] rental properties, and was erroneously depreciated on business depreciation schedule." If only four vehicles were used for business purposes during the audit period, Taxpayer argues that it may use the standard mileage rate to calculate its car expense deduction.

However, Taxpayer has not provided documentation, during the audit or during the protest process, to support its assertion that it did not operate five vehicles at the same time for business purposes during the audit period. Taxpayer has not provided evidence that to show, beyond Taxpayer's mere assertion, that the 2009 GMC Truck was not used for business purposes during the audit period. The auditor properly used the best information available and calculated the deductible expenses using Taxpayer's actual expenses such as fuel, repairs, and insurance.

However, as indicated in the audit report, even if Taxpayer provided evidence that it operated only four vehicles for business purposes during the audit report, Taxpayer's mileage records are insufficient to determine the amount of Taxpayer's available deductions and its tax liability. The audit report points out that "[t]he mileage logs do not appear to be contemporaneous records," having been "written in the same pen at what appears to be the same time" and in the same handwriting. Taxpayer's mileage logs report "multiple days where [Taxpayer] claims to have plowed snow for anywhere from 700 to 1200 miles in a single day which is not possible mathematically." The audit report also notes that the entries in the mileage logs are incomplete, failing to include business destinations or addresses. Finally, during "the months with the largest amounts of claimed miles the taxpayer had insufficient wage expense to correlate with the mileage driven." The audit report points out that "the [T]axpayer was given repeated attempts to provide additional information but stated that they stood by their mileage records and the records provided."

During the protest process, Taxpayer did not address the concerns raised in the audit report regarding the sufficiency or accuracy of its mileage logs. Taxpayer also did not provide any additional documentation or evidence during the protest process that it had not already provided during the audit. Taxpayer did not meet its burden to prove that the Department's proposed assessment is incorrect, and its protest is respectfully denied.

FINDING

Taxpayer's protest is respectfully denied.

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