

**Letter of Findings: 01-20130672
Individual Income Tax
For the Years 2010 and 2011**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 - Bank Account Transfers.

Authority: IC § 6-3-2-1(a); IC § 6-8.1-5-1(c); IC § 6-8.1-5-4; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayers argue that an audit of their individual income tax returns overstated the amount of income they earned.

STATEMENT OF FACTS

Taxpayers are Indiana residents, filed Indiana income tax returns, and own and operate photography and construction businesses. Taxpayers also earn money from rental properties.

The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayers' photography business. The audit compared Taxpayers' bank records with the amount of gross sales reported by the photography business. The sales tax audit led to a review of Taxpayers' individual income tax returns. In turn, that income tax audit resulted in an assessment of additional income tax.

Taxpayers disagreed with the assessment of additional income tax and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayers' representative explained the basis for the protest. This Letter of Findings results.

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DISCUSSION

In reviewing Taxpayers' bank records, the Department's audit determined that "discrepancies were noted in the photography business reporting of sales" and that "bank deposits exceeded gross sales"

In attempting to resolve the purported discrepancies, the original audit report noted that, "Requests were made numerous times for the [T]axpayer[s] to provide actual bank documentation showing transfers were made between business accounts" but that Taxpayers were "unable to provide any source documentation to explain the differences." The information requests were first made January 2013 with the preliminary audit results eventually discussed with Taxpayers' representative in March that same year during the "closing conference."

Taxpayers argued that the Department's audit overstated the amount of income they earned during 2010 and 2011 and that any apparent discrepancies were "due to selling personal items and transfers between accounts."

In their protest letter, Taxpayers' representative stated that the "client made numerous deposits to the business accounts and frequently transferred funds between accounts" and that Taxpayers practiced "co-mingling of funds" Taxpayers argued that transfers of money from one of their bank accounts to another bank account did not represent taxable income. To that end, Taxpayers provided documentation which purported to substantiate their argument. This documentation was forwarded to the Department's audit division for supplementary review.

Indiana imposes a state individual income tax in the following manner. IC § 6-3-2-1(a) states in relevant part that, "Each taxable year, a tax at the rate of three and four-tenths percent (3.4 [percent]) 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."

In evaluating Taxpayers' protest, it is their responsibility to establish that the pending tax assessment was 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). Thus, Taxpayers are required to provide documentation explaining and supporting their challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

In addition, Indiana law requires, "Every 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).

In reviewing Taxpayers' additional information, the supplementary audit noted that Taxpayers provided bank statements for an account that was not provided during the original audit. However, "None of the amounts on the information provided corresponds with the bank statements." On the additional documentation, Taxpayers noted various telephone bank transfers however the audit "had previously subtracted these transfers" during the original audit.

In addition to the bank records, Taxpayers also presented a list of "[p]ersonal things . . . sold for cash over the last few years," a list of Taxpayers' aircraft tools, a list of items sold on eBay, a "computer generated note stating the [T]axpayers sold a vehicle to another couple," and a computer generated listing which stated "2 year total 56,075.70 monies deposited 'contributed capital.'"

The supplementary audit of Taxpayers' documentation submitted as a result of the protest process concluded that "[t]he [T]axpayer[s] still [have] not presented evidence supporting their claim that the income included in the bank should not be included on their individual income tax returns."

As noted above, Taxpayers are responsible for establishing that the income tax assessment is wrong and that they are required to keep good and proper business records sufficient to establish their claim. The Department is not prepared to agree that Taxpayers have met either threshold. The supplementary information largely repeats information supplied at the time of the original audit and is insufficient to establish with any certainty that the bank records simply demonstrated transfers from one account to the next or represented Taxpayers' "contribution to capital." In addition, some of the information is simply irrelevant to the question. Taxpayers have not met the statutory burden under IC § 6-8.1-5-1(c) of establishing that the income tax assessment was wrong.

FINDING

Taxpayers' protest is respectfully denied.

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