

DEPARTMENT OF STATE REVENUE

01-20140006.LOF

**Letter of Findings Number: 01-20140006
Individual Income Tax
For Tax Year 2007**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The protest of proposed assessment of Indiana adjusted gross income is sustained to the extent verified by a supplemental audit. Documentation from a federal income audit will be used to verify the amount of additional Indiana adjusted gross income due.

ISSUE

I. Individual Adjusted Gross Income—Adjustments.

Authority: Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014); 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); IC § 6-3-2-1; IC § 6-1-3.5; IC § 6-8.1-5-1.

Taxpayer protests the amount of proposed Indiana adjusted gross income tax.

STATEMENT OF FACTS

Taxpayers are a married couple. The Indiana Department of Revenue ("Department") was informed by the Internal Revenue Service ("IRS") of an adjustment to Taxpayers' federal income tax, which resulted in an adjustment to Taxpayers' Indiana adjusted gross income tax ("AGIT") for the tax year 2007. The Department therefore issued a proposed assessment for additional 2007 Indiana AGIT based on the information supplied by the IRS. Taxpayers protested that they were in the process of protesting the federal adjustments and that, if they were successful at the federal level, their Indiana AGIT would be correspondingly adjusted. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Individual Adjusted Gross Income—Adjustments.

DISCUSSION

Taxpayers protest the Department's proposed assessment of AGIT for the tax year 2007. Taxpayers state that the amount of the proposed assessment is incorrect since the amount of the reported federal adjustment which gave rise to the Indiana proposed assessment was itself incorrect. Taxpayers explain that they protested the federal adjustment with the IRS and that any resulting change to the federal adjustment would result in a corresponding change to the amount of Indiana AGIT due.

As a threshold issue, 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). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to an agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

The adjusted gross income tax is imposed under IC § 6-3-2-1, which during 2007 stated:

- (a) 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.
- (b) Except as provided in section 1.5 of this chapter, each taxable year, a tax at the rate of eight and five-tenths percent (8.5 [percent]) of adjusted gross income is imposed on that part of the adjusted gross income derived from sources within Indiana of every corporation.

Also of relevance is IC § 6-3-1-3.5(a), which explains that for individuals Indiana AGIT is adjusted gross income as defined in Section 62 of the Internal Revenue Code, with specified Indiana modifications.

As part of the protest process, Taxpayers were able to provide IRS documentation establishing Taxpayers' 2007 federal income. Also, Taxpayers were able to provide documentation establishing that this was the final determination of their federal income for 2007. Since the IRS has now made adjustments to Taxpayers' 2007 taxable income as defined in Section 62, Taxpayers' 2007 Indiana AGIT should also be adjusted. Taxpayers have met the burden imposed under IC § 6-8.1-5-1(c).

FINDING

Taxpayers' protest is sustained.

Posted: 05/27/2015 by Legislative Services Agency
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