

**Letter of Findings Number: 01-20140399
Individual Income Tax
For Tax Year 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 individuals were able to provide documentation establishing that a vehicle was purchased by an LLC they own and then transferred to another business they own. The vehicle was not purchased for the individuals and so did not constitute income to the individuals.

ISSUES

I. Individual Income Tax–Imposition.

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

Taxpayers protest a proposed assessment for additional income tax.

II. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayers protest the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayers are a married couple who are Indiana residents. Taxpayers own several car dealerships in Indiana and other states. As the result of an investigation, the Indiana Department of Revenue ("Department") determined that two entities owned by Taxpayers had purchased a vehicle for Taxpayers' use, therefore constituting income to Taxpayers. The Department therefore issued proposed assessments for individual income tax, penalty, and interest. Taxpayers filed a protest of those proposed assessments. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Individual Income Tax–Imposition.

DISCUSSION

Taxpayers protest the imposition of individual income tax on the value of a vehicle purchased by entities which they own. The Department based its proposed assessments on the basis that it viewed the purchase by the entities as a purchase for Taxpayers' personal use. Therefore, the Department believed, the vehicle constituted income to Taxpayers. The Department did not cite any statute or regulation in its letter to Taxpayers informing them of the income tax adjustment. Taxpayers state that the vehicle was purchased by the entities for resale at one of those entities's out-of-state dealership location. Taxpayers further state that the Department has not established that there was a taxable event.

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 the 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.

Taxpayers argue that their businesses paid for the vehicle and that the vehicle was transported from the purchase location in another state to one of Taxpayers' dealerships. In support of their protest, Taxpayers provided purchase documentation and the bill of lading establishing that the vehicle was sent from the out-of-state business location to a third state at the address of one of Taxpayers' auto dealerships. Therefore, Taxpayers have established that the purchase of the vehicle was an ordinary purchase in the course of running Taxpayers' auto dealerships. As explained above, the Department provided no citation to any statute or regulation in its notification of the proposed assessments. Taxpayers have met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

FINDING

Taxpayers' protest is sustained.

II. Tax Administration–Negligence Penalty.

DISCUSSION

The Department issued a proposed assessment for income tax and ten percent negligence penalty for the tax year in question. Taxpayers protest the imposition of penalty. Taxpayers believe that they acted in a reasonable manner and that the penalty should be waived.

The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to [45 IAC 15-11-2](#)(b), which states:

"Negligence", on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

[45 IAC 15-11-2](#)(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-\[2.1\]](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayers were issued a proposed assessment for income tax. The Department determined that the tax was unpaid due to negligence under [45 IAC 15-11-2](#)(b), and so was subject to penalty under IC § 6-8.1-10-2.1(a). In the course of the protest process, Taxpayers were able to establish that no additional income tax was due. Therefore, Taxpayers established that they exercised ordinary business care and prudence in carrying out their tax duties. Taxpayers have met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment of penalty wrong.

FINDING

Taxpayers protest is sustained.

SUMMARY

Taxpayers are sustained in Issue I regarding the imposition of income tax. Taxpayers are sustained in Issue II regarding the imposition of penalty for the year at issue.

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