

DEPARTMENT OF STATE REVENUE

01-20140512.LOF

**Letter of Findings Number: 01-20140512
Individual Income Tax
For Tax Years 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 did not provide adequate analysis or documentation supporting the protest. They did not meet the burden of proving the proposed assessment wrong.

ISSUE

I. Individual Income Tax—Partnership Income.

Authority: 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); Wendt LLP v. Indiana Dept. of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); IC § 6-8.1-5-1; [45 IAC 3.1-1-106](#).

Taxpayers protest proposed assessment for additional individual income tax.

STATEMENT OF FACTS

Taxpayers are an out-of-state married couple. After a review of Taxpayers' 2012 IT-40PNR full year nonresident Indiana income tax return, the Indiana Department of Revenue ("Department") determined that Taxpayers had incorrectly calculated Indiana taxes owed on income from an Indiana partnership. The Department therefore reduced Taxpayers' 2012 refund by \$103.00. Taxpayers protested that they had correctly calculated their 2012 Indiana income taxes and that the Department's recalculation was incorrect. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Individual Income Tax—Partnership Income.

DISCUSSION

Taxpayers protest that the Department's recalculation of Taxpayers' 2012 Indiana adjusted gross income tax is incorrect. Taxpayers state that the 2012 partnership K-1 they received included income received in 2011 because the partnership is on a fiscal year ending April 30, 2012. Specifically, Taxpayers state that the income in question was a distribution from the partnership rather than a distributive share of the partnership. Taxpayers did not cite to any statute, regulation or court case in support of their protest. During the administrative hearing, the Hearing Officer asked for additional analysis including such citations. Taxpayer agreed to send such analysis. When the deadline for the submission of documentation and analysis approached, Taxpayer requested and was granted an additional 30 days to send the information. The new deadline passed without such submission, therefore this Letter of Findings is written based on the information available.

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.

The Department refers to [45 IAC 3.1-1-106](#), which provides:

- (a) A partnership is not subject to the adjusted gross income tax. The partners will include their share of partnership income whether distributed or undistributed on their separate or individual returns.
- (b) An individual will report as follows:
 - (1) The distributive share of a resident partner will be reported in total no matter where the partnership's business is located or in which states it does business.
 - (2) The distributive share of a nonresident partner will be reported after apportionment to determine the partnership income derived from sources within Indiana. This determination will be accomplished by use of the apportionment formula described in [IC 6-3-2-2\(b\)](#).
 - (3) A resident partner's distributive share of income will be adjusted by the partner's proportionate share of the partnership's income that is exempt from taxation under the Constitution and statutes of the United States and by the partner's proportionate share of the partnership's deductions allowed or allowable under Section 62 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States or for taxes on property levied by any subdivision of any state of the United States.
 - (4) A nonresident partner's distributive share of income will be adjusted by the partner's proportionate share of the partnership's income that is exempt from taxation under the Constitution and statutes of the United States and by the partner's proportionate share of the partnership's deductions allowed or allowable under Section 62 of the Internal Revenue Code for taxes based on or measured by income levied at the state level by any state of the United States or for taxes on property levied by any subdivision of any state of the United States determined by use of the apportionment formula described in [IC 6-3-2-2\(b\)](#).
- (c) A corporate partner will report its share in accordance with section 153 of this rule. (Emphasis added).

Therefore, Taxpayers were required to report their distributive share after apportionment to determine the partnership income derived from sources within Indiana.

Taxpayers argue that the income at issue was a distribution rather than a distributive share. Taxpayers contend that this makes a difference. Taxpayers did not provide any detailed analysis or documentation in support of this position, despite ample time to do so. As explained during the hearing and in the Department's letter setting the hearing, the protest process is a taxpayer's opportunity to clearly explain their protest and to provide relevant and cogent supporting documentation.

Taxpayers have not presented a sufficiently developed argument for the Department to address. See *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480, 485 n.9, (Ind. Tax Ct. 2012) (stating in a footnote parenthetical "that poorly developed and non-cogent arguments are subject to waiver" by the Indiana Tax Court) (citing *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax. Ct. 2010)). Taxpayers have not met the burden of proving the proposed assessment wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayers' protest is denied.

Posted: 06/24/2015 by Legislative Services Agency
An [html](#) version of this document.