

**Letter of Findings: 01-20140615
Individual Income Tax
For the Years 2011-2012**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual is a member of Retail Merchant LLC. The LLC profits and losses pass through and are taxable at the member level. The Department properly assessed Individual's individual income tax return to reflect changes in LLC profits and losses.

ISSUE

I. Individual Income Tax - Imposition.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-4; IC § 6-3-2-1; IC § 6-3-1-3.5; IC § 6-3-4-11; [45 IAC 3.1-1-106](#); [45 IAC 3.1-1-2](#); [45 IAC 3.1-1-7](#); [45 IAC 2.2-6-8](#); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007). I.R.C. §701; Treas. Reg. § 301.7701-3(a).

Taxpayer protests the assessment of additional income tax.

STATEMENT OF FACTS

Taxpayer is an individual who is one of the members of an Indiana Limited Liability Company ("LLC"). LLC owns a convenience store and gas station in Indiana. The Indiana Department of Revenue ("Department") performed sales and use tax audits of LLC for the 2011-2012 tax years. The Department reviewed LLC's business records and determined that LLC's records were inadequate to support its claimed sales and use tax obligations. The Department therefore, adjusted LLC's sales and use tax amounts and issued proposed assessments.

As a result of the Department's audit, the Department issued proposed assessments of additional sales and use tax. The Department determined that Taxpayer had not collected and/or reported the proper amount of sales and use tax on its sales of convenience store items. Pursuant to IC § 6-8.1-5-1 and [45 IAC 2.2-6-8](#), sales and use tax was assessed on these additional taxable sales. The LLC protested the sales and use tax assessment. For further information relating to the sales and use tax assessment, please refer to Letter of Findings 04-20140616 in which LLC was denied in all regards except its protest of the imposition of penalty. The Department's adjustment to reflect increased sales also resulted in increased income from these sales.

LLC elected to be treated as a partnership for income tax purposes. As a member of LLC, those income tax assessments flow through to Taxpayer. The Department conducted an investigation of members including Taxpayer and issued proposed assessments to Taxpayer for the additional adjusted gross income tax on his share of LLC income, as well as penalty and interest. Taxpayer protested the income tax assessments. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Individual Income Tax - Imposition.

DISCUSSION

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 Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. 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.

Indiana imposes an adjusted gross income tax on all residents. IC § 6-3-2-1. A taxpayer's Indiana income is determined by starting with the federal income and making certain adjustments. IC § 6-3-1-3.5. Income from an LLC flows through to the individual members' personal income and is reported by the members on their personal income tax returns. See I.R.C. § 701; Treas. Reg. § 301.7701-3(a). See also; IC § 6-3-4-11(a); [45 IAC 3.1-1-106](#); [45 IAC 3.1-1-2](#)(14); [45 IAC 3.1-1-7](#)(6).

If the Department reasonably believes that a person has not reported the proper amount of tax due, the Department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the Department. IC § 6-8.1-5-1(a). 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). A person must allow inspection of the books and records and returns by the Department or its authorized agents at all reasonable times. IC § 6-8.1-5-4 (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 incorrect rests with the person against whom the proposed assessment is made. IC § 6-8.1-5-1(c).

Taxpayer was assessed additional individual income tax based upon the adjustments made to LLC's adjusted gross income from loss expenses that should have been taken, determined in LLC's audit. LLC protested the sales and use tax assessment. Please refer to Letter of Findings 04-20140616 for further information relating to LLC's sales and use tax protest. The Department determined that adjustments made to LLC's income tax for 2011 and 2012 were a decrease in the allowable expense deductions. This decrease caused a net increase in taxable income allocable to the members in 2011 and a net decrease in reportable net loss in 2012.

Taxpayer did not provide any documentation to show that the Department's adjustments were incorrect. Taxpayer has not met the burden described in IC § 6-8.1-5-1(c). Taxpayer's protest of the imposition of additional individual income tax—based upon adjustments to LLC's income determined in the audit—is denied.

FINDING

Taxpayer's protest is denied.

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