

**Letter of Findings: 01-20140592
Indiana Individual Income Tax
For The Tax Year 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. 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 was required to file 2011 Indiana individual income tax return because he was an Indiana resident and received 1099 income which was subject to Indiana income tax. Individual was responsible for the negligence penalty because he failed to affirmatively establish reasonable cause for penalty abatement. Individual was also liable for the interest because it was statutorily mandated.

ISSUES

I. Indiana Individual Income Tax - Imposition - Non-filer.

Authority: Ind. Const., art. IX, § 8; I.R.C. § 61; I.R.C. § 62; IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-4-1; IC § 6-3-4-3; IC § 6-8.1-5-1; IC § 6-8.1-5-4; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Indiana Dep't of State Rev. v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); [45 IAC 15-5-7](#).

Taxpayer protests the Department's proposed assessment for the 2011 tax year.

II. Tax Administration - Interest and Negligence Penalty.

Authority: IC § 6-8.1-3-17; IC § 6-8.1-5-2; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the interest and negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana resident, who had not filed Indiana income tax returns since 2005. For the tax year 2011, based on the best information available, the Indiana Department of Revenue ("Department") determined that Taxpayer received 1099 income, which was subject to Indiana income tax. Taxpayer did not file his 2011 Indiana income tax return, IT-40 form, and pay the income tax that was due. The Department thus assessed Taxpayer income tax, interest, and penalty based on the best information available to the Department.

Taxpayer timely protested the assessment but provided no supporting documentation. Rather, Taxpayer requested that the Department make the determination based on the information within the file. This Letter of Findings results and addresses Taxpayer's protest of the proposed assessment for the tax year 2011. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Imposition - Non-filer.

DISCUSSION

The Department found that Taxpayer is an Indiana resident who received 1099 income in 2011 but did not file his 2011 Indiana income tax return and pay the tax due. The Department thus assessed Taxpayer Indiana income tax.

Taxpayer did not dispute that he has been an Indiana resident. Rather, Taxpayer contended that he did not owe

any Indiana income tax for the tax year 2011 pursuant to his constitutional rights under the United States Constitution ("Constitution").

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment 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). Also, "all statutes are presumptively constitutional." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 587 (Ind. 2014) (citing *UACC Midwest, Inc. v. Indiana Dep't of State Rev.* 629 N.E.2d 1295, 1299 (Ind. Tax Ct. 1994)). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Caterpillar, Inc.*, 15 N.E.3d at 583. Thus, the issue is whether Taxpayer meets the burden of proof to demonstrate that the Department's proposed assessment was incorrect.

The Indiana Constitution, art. IX, § 8, states that the Indiana General Assembly "may levy and collect a tax upon income, from whatever source derived, at such rates, in such manner, and with such exemptions as may be prescribed by law." Ind. Const., art. IX, § 8. To that end, Indiana imposes a tax "on 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." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers properly and correctly file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. Gross income is "all income from whatever source derived, including (but not limited to) . . . [c]ompensation for services, including fees, commissions, fringe benefits, and similar items . . . [i]nterest . . . [a]nnuities . . . [and] . . . [p]ensions; . . ." I.R.C. § 61(a). "[A]djusted gross income" is "in the case of an individual, gross income" less various deductions. I.R.C. § 62. Thus, IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

Accordingly, a taxpayer who is an Indiana resident is required to file the Indiana individual income tax return before the statutory due date. IC § 6-3-4-1(1); IC § 6-3-4-3(1). Additionally, to accurately determine the taxpayer's tax liability, the taxpayer is required to keep books and records, including "all source documents necessary to determine the tax, including invoices, register tapes, receipts and canceled checks." IC § 6-8.1-5-4(a).

Taxpayer in this instance claimed that he had "been involved with determining [his] liability for paying an individual income tax for [more than] 'seven years.'" Specifically, Taxpayer argued, in relevant part, that "What and Where is the Law that makes me . . . LIABLE TO PAY A PERSONAL INCOME TAX? It is not the Constitution!" Taxpayer maintained that the Sixteenth Amendment to the Constitution is not the Constitution, and thus Indiana is not permitted to impose state income tax following the Internal Revenue Code. Other than several letters corresponding with the Department on the argument of the Constitution and the power to tax his income, Taxpayer provided no supporting documentation to support his protest.

Upon review, however, Taxpayer is mistaken. First, as mentioned earlier, "all statutes are presumptively constitutional." *Caterpillar, Inc.*, 15 N.E.3d at 587. Beyond that, the Department must decline Taxpayer's invitation to ascertain his argument of the Constitution because the administrative process is not the proper venue to do so.

Second, Taxpayer did not dispute that he has resided in Indiana since 1996 and an Indiana resident during 2011; nor did Taxpayer dispute that he received the 1099 income in 2011. Thus, for the tax year 2011, as an Indiana resident, Taxpayer was required to file his Indiana individual income tax return, IT-40 form, and pay his Indiana income tax on the 1099 income he received, if any, on or before the statutory due date, i.e., April 17, 2011. IC § 6-3-4-1(1); IC § 6-3-4-3(1). Taxpayer did not do so. Since Taxpayer did not file his 2011 IT-40 and pay the Indiana income tax, the statute of limitations does not apply. [45 IAC 15-5-7\(f\)](#) provides, in relevant part, as follows:

The running of the statute of limitations for purposes of assessing unpaid taxes **will not start if the taxpayer fails to file a return which is required by any listed tax provision**. Also, a substantially blank, unsigned or fraudulent return will not start the running of the statute of limitations. . . . (**Emphasis added**).

That is, the Department timely and properly assessed Taxpayer based on the best information available to the

Department and the proposed assessment is presumed to be correct. Given the totality of the circumstances, in the absence of supporting documentation, the Department is not able to agree that Taxpayer met his burden demonstrating that the proposed assessment was wrong. Taxpayer remains liable for the assessment.

FINDING

Taxpayer's protest is respectfully denied.

II. Tax Administration - Interest and Negligence Penalty.

DISCUSSION

Taxpayer requested that the Department abate the statutory interest. However, pursuant to IC § 6-8.1-10-1(e), the Department is only permitted to waive the interest under IC § 6-8.1-3-17(c) and IC § 6-8.1-5-2. Taxpayer provided no documentation to support its request for the waiver. Thus, the Department does not have the authority to waive the interest imposed.

Taxpayer also requested that the Department abate the negligence penalty. The Department may assess a negligence penalty if the taxpayer "(2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment; (3) incurs, upon examination by the department, a deficiency that is due to negligence; [or] (4) fails to timely remit any tax held in trust for the state . . ." IC § 6-8.1-10-2.1(a).

[45 IAC 15-11-2\(b\)](#) further 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.

The Department may waive a negligence penalty when "the taxpayer affirmatively establishes that the failure . . . was due to reasonable cause and not due to negligence." [45 IAC 15-11-2\(c\)](#). 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." Id. The Department is mindful that "[r]easonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case."

In this instance, Taxpayer did not provide documents to affirmatively establish that its failure to pay tax was not due to negligence.

FINDING

Taxpayer's protest of the imposition of statutory interest and negligence penalty is denied.

SUMMARY

For the reasons discussed above, Taxpayer's protest of the Department's proposed assessment of additional tax is denied. Taxpayer's protest of the statutory interest and the negligence penalty is also respectfully denied.

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An [html](#) version of this document.*