

Letter of Findings: 01-20150225
Individual Income Tax
For the 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Indiana Resident failed to meet his burden of establishing that he was not a resident of Indiana for purposes of the state's individual income tax. The Department rejected the Resident's argument that he was a sovereign citizen outside the jurisdiction of Indiana and that Indiana lacked the authority to impose a tax on income received or earned within the state.

ISSUE

I. Individual Income Tax - Residency.

Authority: Ind. Const. art. X, § 8; IC § 6-3-1-3.5 et seq.; IC § 6-3-1-9; IC § 6-3-2-1(a); IC § 6-3-1-12; IC § 6-8.1-5-1(c); *New York v. Graves*, 300 U.S. 308 (1937); *McKeown v. Ott*, No. H 84-169, 1985 WL 11176 (N.D. Ind. Oct. 30, 1985); *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); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Richey v. Ind. Dept. of State Revenue*, 634 N.E.2d 1375 (Ind. Tax Ct. 1994); *In Re Angstrom*, No. 91-22044DAS, 1994, LEXIS 1218 (Bankr. E.D. Pa. Aug. 17, 1984); *Black's Law Dictionary* (9th ed. 2004).

Taxpayer protests the assessment of Indiana individual income tax on the ground that he is a sovereign citizen not subject to the taxing jurisdiction of the state of Indiana.

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") issued Taxpayer a notice stating that he was required to file an Indiana individual income tax return.

The Department issued the notice on the ground that Taxpayer has been an Indiana resident, received income during the tax year 2011, but did not file a tax return.

The notice asked Taxpayer to file the Indiana return, send the Department a copy of that return if one had already been filed, or provide the reasons and documentation Taxpayer believed established that it was not necessary for him to file the 2011 return.

Taxpayer responded by means of an "affidavit of claim of exemption" which the Department treated as Taxpayer's protest.

An administrative hearing was scheduled in order to provide Taxpayer an opportunity to explain the basis for his protest. Instead of participating in that hearing, Taxpayer forwarded a letter explaining that he would "not be attending the hearing" but that the Department ignored "many deductions that I'm entitled to"

This Letter of Findings results.

I. Individual Income Tax - Residency.

DISCUSSION

The issue is whether Taxpayer was required to file a 2011 Indiana individual income tax return, report any income subject to Indiana tax, and pay any consequent Indiana tax.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *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). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position 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). In reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we 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).

Indiana imposes an income 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). For income tax purposes, "The term 'resident' includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state . . ." IC § 6-3-1-12.

Taxpayer's affidavit is a densely written challenge to the imposition of the Indiana's individual income tax generally. At first reading, it would appear that the Taxpayer bases his challenge on multiple grounds. However, after separating the wheat from the chaff, it is apparent the Taxpayer's protest centers on the assertion that "he is not a person, corporation or other entity as defined with the Indiana Revenue and Taxation Code" and that he is "not required to pay the Indiana Personal Income Tax." Derivative of this base assertion, is Taxpayer's argument that he earned no "income" as defined under the U.S. Const. amend. XVI. Liberally construed, Taxpayer's protest is predicated on the belief that he stands outside the state's taxing authority and, accordingly, is not subject to the state's individual income tax.

Taxpayer misapprehends the constitutional and statutory authority to impose and collect individual income taxes conferred upon the state of Indiana. As set out in the Indiana Constitution, "The 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. X, § 8. The Department will assume the framers of the Indiana Constitution chose their words with care and, in the quoted section above, selected the word "levy" to describe the relationship between the state, the state's income tax, and the state's taxpayers. When the cited constitutional provision gave the general assembly the right to "levy" an income tax, it did so with the notion that the state had the right to "impose or assess (a fine or tax) by legal authority" that tax. *Black's Law Dictionary* 991 (9th ed. 2009). In IC § 6-3-1-3.5 et seq., the general assembly exercised its constitutional prerogative by imposing the adjusted gross income tax on both individuals and corporations. In doing so, it defined an individual, subject to the adjusted gross income tax as "a natural born person, whether married or unmarried, adult or minor." IC § 6-3-1-9. And, although the general assembly has provided for refinements to and exemptions from the imposition of the state's individual income tax, one will search without success to discover an exemption for those Indiana residents who unilaterally declare they stand outside the jurisdictional reach of the state.

Taxpayer's lengthy affidavit is a hodge-podge of threadbare tax-protestor arguments, which range from the merely curious to those "which border on the otherworldly." In *Re Angstrom*, No. 91-22044DAS, 1994, LEXIS 1218, at *15 (Bankr. E.D. Pa. Aug. 17, 1984). However deeply felt Taxpayer's convictions may be, those convictions are contrary to practical reality, common sense, and the plain law. Taxpayer's assertion, that compensation for labor is not income, that the income tax may be assessed only against gain recognized from the growth out of capital, and that only corporate entities are subject to the income tax have been "clearly and repeatedly rejected by this and every other court to review them." *McKeown v. Ott*, No. H 84-169, 1985 WL 11176 at *1 (N.D. Ind. Oct. 30, 1985). As stated in *Richey v. Ind. Dept. of State Revenue*, 634 N.E.2d 1375 (Ind. Tax Ct. 1994), "The constitutional legitimacy of the general assembly's decision to tax income is beyond dispute." *Id.* at 1376. The right of individual states to impose a tax on the income of its residents was addressed by the Supreme Court in *New York v. Graves*, 300 U.S. 308, 312-13 (1937). In that decision Justice Stone stated "[t]hat the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicile itself affords the basis for such taxation. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protection of its laws are inseparable from responsibility for sharing the costs of government. 'Taxes are what we pay for civilized society.'" (Emphasis added).

Taxpayer did not provide any documentation to support his protest. Taxpayer has failed to meet his burden under IC § 6-8.1-5-1(c) of establishing that the Department's assessment was wrong or that his claims are anything more than "[p]oorly developed and non-cogent arguments" Scopelite, 939 N.E.2d at 1145.

FINDING

Taxpayer's protest is denied.

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