

Letter of Findings Number: 02-20150340.LOF
Income Tax
For Tax Years 2012-13

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Retailer failed to provide documentation supporting its protest. Therefore, Retailer failed to prove the proposed assessment was wrong.

I. Income Tax—Imposition.

Authority: IC § 6-3-2-2; IC § 6-8.1-5-1; IC § 6-3-2-1; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); 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); Wendt LLP v. Indiana Dept. of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the imposition of income tax.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation which does business solely within the state boundaries of Indiana. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not paid tax on its corporate adjusted gross income ("income tax") for the tax years 2012 and 2013. The Department therefore issued proposed assessments for income tax, negligence penalty, and interest. Taxpayer protested the Department's proposed assessments. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Income Tax—Imposition.

DISCUSSION

Taxpayer generally protests the proposed assessments for income tax for the years 2012 and 2013. Because Taxpayer failed to file corporate income tax returns for those years, an audit by the Department was conducted. During the audit, the Taxpayer lacked documentation supporting the actual amount of income it earned for those years. The Department therefore used the best information available to determine the amount of income tax which should have been paid by Taxpayer for the tax years at issue.

As a threshold issue, it is axiomatic that 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.

Also, the Department refers to IC § 6-8.1-5-1(b), which states:

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. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail. (Emphasis added).

Adjusted Gross Income tax is imposed on corporations by IC § 6-3-2-1(a), which states in pertinent part:

Each taxable year, a tax at the following rate of adjusted gross income is imposed on that part of the adjusted gross income derived from sources within Indiana of every corporation:

- (1) Before July 1, 2012, eight and five-tenths percent (8.5[percent]).
- (2) After June 30, 2012, and before July 1, 2013, eight percent (8.0[percent]).
- (3) After June 30, 2013, and before July 1, 2014, seven and five-tenths percent (7.5[percent]).

Further, IC § 6-3-2-2(a) provided in pertinent part:

With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;

In its protest letter and in the administrative hearing, Taxpayer stated that it did not believe that the Department gave proper credence to the documentation which Taxpayer provided during the audit. Taxpayer did not provide any new documentation or additional analysis of the previously provided documentation.

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. Taxpayer has 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 fn.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)). Taxpayer has not met the burden of proving the proposed assessments wrong, as required by IC § 6-8.1-5-1(c). Furthermore, documentation was requested from the Taxpayer, and Taxpayer agreed to provide documentation within two (2) weeks supporting assertions made during the administrative hearing, but the Taxpayer failed to provide any documents whatsoever during the specified time.

FINDING

Taxpayer's protest is denied.

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