

**Letter of Findings Number: 01-20140625**  
**Individual Income Tax**  
**For Tax Years 2011 and 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individuals had taxable income that carried through to them from a retail business that they co-owned; individuals did not prove that the Department's audit methodology of the business was incorrect. Therefore, the Department's proposed assessments for individual income tax were proper.

### ISSUES

#### I. Individual Income Tax—Carry Through Income.

**Authority:** IC § 6-8.1-5-1; 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); [45 IAC 3.1-1-8](#).

Taxpayers protest proposed assessments for additional income tax that carried through to them from their business which was a partnership for 2011 and an S-corporation for 2012.

#### II. Tax Administration—Penalties and Interest.

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

Taxpayers protest the imposition of penalties and interest.

### STATEMENT OF FACTS

Taxpayers are a husband and wife that filed their taxes as married filing jointly. The husband is a part owner of a retail business that operates as a gas station and convenience store. As the result of an audit by the Indiana Department of Revenue ("Department"), the Department issued proposed assessments for the business. For the year 2011 the business was a partnership, for the year 2012 the business was an S-corporation. Additional taxable income resulted in proposed assessments for income tax which flowed to the business owners. The years at issue for individual income tax are 2011 and 2012. Taxpayers protested, and an administrative hearing was held and this Letter of Findings results. Further facts will be supplied as needed.

#### I. Individual Income Tax—Carry Through Income.

### DISCUSSION

As a threshold issue, it is Taxpayers' 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.

The Department's report states that it "address[es] the carry through of the additional taxable income for [Taxpayers' retail business]. The additional taxable income was a result of [an] income tax audit" of the business. Further, the report notes that the business was "for 2011 (Partnership) and 2012 (S Corporation)" and that it was "determined that there was additional taxable income." The Department had made an adjustment, pursuant to [45 IAC 3.1-1-8](#), "to include additional convenience store sales."

In a separate Letter of Findings, the Department denied the retail business's protest of the proposed assessments for sales and use tax; a separate Letter of Findings also denied the income tax protest for the retail business. Since Taxpayers' protest in the instant case is wholly dependent on the outcome of the protest of the retail business, and since that protest was denied, Taxpayers' individual income tax protest is also denied. The Department does note that in the separate Letter of Findings, the Legal Division requested that the Audit Division review Taxpayers' statement that two calculation errors occurred and make any adjustments if warranted. Otherwise, Taxpayers have not met the burden of proving the proposed assessments for income tax incorrect, as required by IC § 6-8.1-5-1(c).

### FINDING

Taxpayers' protest is denied.

## II. Tax Administration—Penalties and Interest.

### DISCUSSION

Taxpayers protest the imposition of penalties pursuant to IC § 6-8.1-10-2.1. Interest is imposed pursuant to IC § 6-8.1-10-1, and the Department notes that waiver of interest is not permitted under IC § 6-8.1-10-1(e). Penalty waiver is permitted if the taxpayers show that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

"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 standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#)(c) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, 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. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

As explained in the Letter of Findings for the business, Taxpayers failed in their duty as the owners/operators of a business to keep sales records as required under IC § 6-8.1-5-4(a). That failure as the owners/operators, along with the Department's audit conclusion that the business owed additional tax, directly led to the imposition of the income tax assessments at issue in this protest. Taxpayers have not affirmatively established that they exercised

ordinary business care in this case. Therefore, waiver of penalties is not warranted under [45 IAC 15-11-2\(c\)](#).

**FINDING**

Taxpayers' protest to the imposition of penalties and interest is denied.

**SUMMARY**

Taxpayers' Issue I protest regarding the imposition of adjusted gross income tax is denied. Taxpayers' Issue II protest regarding the imposition of penalties and interest is denied.

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