

**Letter of Findings Number: 01-20150009
Individual Income Tax
For Tax Years 2008 - 2013**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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, husband and wife, had taxable income that carried through from a retail business that husband 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–S-corporation Carry Through.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-4; 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); [45 IAC 15-5-7](#); [45 IAC 3.1-1-1](#).

Taxpayers protest the proposed assessment of income tax that carried through from the S-corporation to the individual owner.

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](#).

Taxpayer protests the imposition of penalties and interest.

STATEMENT OF FACTS

Taxpayers are married filing jointly. Husband owns a retail business that elected to file as an S-corporation. The Indiana Department of Revenue ("Department") conducted an audit for income tax, among other taxes that were audited, which resulted in proposed assessments of tax that carried through from the S-corp to the individual owner. Taxpayers protested and an administrative hearing was held; this Letter of Findings results. More facts will be provided as needed below.

I. Individual Income Tax–S-corporation Carry Through.

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 audit for the retail business was for longer than three years because, pursuant to [45 IAC 15-5-7](#), "if the adjusted gross income is under reported by more than 25[percent], the statute is open for an additional three years." Thus the "statute of limitations for the years of 2008 through 2013 is now six years, not three." The auditor also notes that "[p]er [45 IAC 3.1-1-1](#), individuals are to report all their income."

Turning to Taxpayers' protest, under the heading of "Personal Tax," they suggest adjustments "on the non metered pump sales and the no change of the metered pump sales"

In a separate Letter of Findings the Department denied both the sales and use tax protest and the corporate income tax protest filed by the business. In the instant case, as an S-corp the additional income of the business flowed to the individual owner. Husband, as the 100 percent shareholder of the business, failed to properly keep records of the business pursuant to IC § 6-8.1-5-4(a). And as the audit report states, [45 IAC 15-5-7](#) increases the statute of limitations from three years to six, since as the audit report states "the adjusted gross income is under reported by more than 25[percent]"

Taxpayers have not met their burden of proving the proposed assessments for individual income tax incorrect, as required by IC § 6-8.1-5-1(c). And, as noted, the protests for the business were also denied.

FINDING

Taxpayers' protest is denied.

II. Tax Administration—Penalties and Interest.

DISCUSSION

Taxpayers protest the imposition of the ten percent negligence penalty. 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). The waiver of the penalty is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides in relevant part:

(b) "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.

(c) 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.

(Emphasis added).

Taxpayers failed to properly keep records as required by law. As noted by [45 IAC 15-11-2\(b\)](#), "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." Taxpayers' have not established reasonable cause, thus its protest of the penalty is denied.

FINDING

Taxpayers' protest of the penalties and interest are denied.

SUMMARY

Taxpayers' protest of the individual income tax assessments is denied; Taxpayers' protest of penalties and interest are also denied.

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