

**Letter of Findings: 01-20150663
Individual Income Tax
For the Year 2010**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individuals failed to show their federal adjusted gross income was lower than the verifiable federal information provided by the Internal Revenue Service.

ISSUE

I. Individual Income Tax - Federal Adjusted Gross Income.

Authority: I.R.C. § 61; I.R.C. § 62; I.R.C. § 316; IC § 6-3-1-3.5; [45 IAC 3.1-1-1](#); IC § 6-8.1-5-1; 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).

Taxpayers protest the Department's assessment of additional Indiana income tax for the 2010 tax year.

STATEMENT OF FACTS

Taxpayers, husband and wife, timely filed their federal and Indiana income tax returns for 2010 tax year. Taxpayers amended their 2010 federal return in October 2013. The Internal Revenue Service ("IRS") examined Taxpayers' filing in April 2014. In November 2014, the IRS issued a notice and a refund, including interest.

In 2015, the Department conducted a desk audit and determined that Taxpayers understated their federal adjusted gross income for the tax year at issue. Thus, the Department's audit adjusted Taxpayers' federal AGI based on the federal information. As a result, the Department issued a proposed assessment, imposing additional income tax, interest, and penalty.

Taxpayers protested the Department's proposed assessment. A phone hearing was conducted during which Taxpayers' representative explained the basis of the protest. This Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - Federal Adjusted Gross Income.

DISCUSSION

Pursuant to the audit, the Department found that Taxpayers understated the amount of their federal adjusted gross income (in Line 37 of the Form 1040) for 2010, which was directly used to compute their Indiana income tax, resulting in a deficiency of Indiana income tax. As a result, the Department proposed an assessment, interest and penalty.

Taxpayers protested the additional assessment of the individual income tax for the tax year at issue. Taxpayers claimed that they amended their 2010 federal return; that the IRS agreed that Taxpayers correctly reported their income and refunded the overpayment after they amended their 2010 return. Thus, Taxpayers asserted that the Department erred in assessing additional income tax.

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).

In general, the Internal Revenue Code requires a taxpayer to report and pay his or her federal income tax when his or her gross income exceeds a certain amount. Gross income includes all income whatever source derived. I.R.C. § 61(a). For state income tax purposes, the presumption is that a taxpayer properly and correctly files his or her federal income tax returns and, thus, to efficiently and effectively compute what is considered Indiana income tax, the Indiana statute refers to the Internal Revenue Code. However, IC § 6-3-1-3.5(a) simply provides the starting point for determining a taxpayer's taxable income, stating that the term "adjusted gross income" shall mean, "In the case of all individuals, 'adjusted gross income' (as defined in Section 62 of the Internal Revenue Code), modified as follows" The Department's Administrative Rules repeat the basic principle at [45 IAC 3.1-1-1](#), which states:

For individuals, "Adjusted Gross Income" is "Adjusted Gross Income" as defined in Internal Revenue Code § 62 modified as follows:

- (1) Begin with gross income as defined in section 61 of the Internal Revenue Code.
- (2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.
- (3) Make all modifications required by [IC 6-3-1-3.5\(a\)](#).

Since Indiana refers to federal adjusted gross income as starting point to compute the taxpayer's individual income tax liability, the amount of the federal adjusted gross income stated in "Line 37" of the Form 1040 is directly used to determine the taxpayer's Indiana adjusted gross income for Indiana individual income tax purposes.

To reach the federal adjusted gross income - the amount in "Line 37" - the taxpayer is required to report each category of his or her income, which includes dividends in Line 9a and 9b. Dividends include any distribution made by a corporation to its shareholders, whether in money or other property, out of its earnings and profits accumulated of the tax year. I.R.C. § 316. Dividends in general are considered gross income and subject to income tax. While certain qualified dividends are taxed at lower rates, ordinary dividends are usually taxed as ordinary income without preferential treatment. When the distribution exceeds a certain threshold amount, the taxpayer is required to report each of the dividends received in Schedule B attached to the taxpayer's federal return.

In this instance, Taxpayers contended that the Department erred in assessing additional Indiana income tax. Taxpayers stated that they erred in reporting dividends income in the original return. Taxpayers referred to their original 1040 and Schedule B, stating that they mistakenly reported one of the qualified dividends (from a foreign company) they received as "ordinary dividends." Thus, Taxpayers amended their federal return, reclassifying that dividends income. Taxpayers also offered a copy of the IRS transcript to support their assertion that they properly reported their Indiana income tax return because the IRS agreed with Taxpayers' calculation and refunded the tax on that dividends income.

Upon review, however, Taxpayers' reliance on their supporting documentation is misplaced. Specifically, the IRS transcript shows that Taxpayers' federal adjusted gross income for the tax year was more than Taxpayers reported in their returns. In addition, Taxpayers' returns were not signed and the attached explanation (Statement 2) was not verifiable. Although the IRS transcript shows that Taxpayers received a refund in November 2014, Taxpayers' federal adjusted gross income remains unchanged.

The Department is mindful that the IRS may grant a refund for various reasons other than the reclassification of dividends income pursuant to its examination. However, pursuant to Indiana law, the IRS transcript is the only verifiable federal information which Indiana may rely on to verify and determine the correct amount of Taxpayers' Indiana income tax due for any given tax year, including the tax year at issue. That is, Taxpayers' federal adjusted gross income is essential to start computing Taxpayers' Indiana income tax. The IRS transcript presumably reflects the information properly reported by Taxpayers. Thus, without an explicit explanation from the IRS to demonstrate otherwise, the Department has no statutory authority to overlook the federal adjusted gross income recorded in the IRS transcript.

Given the totality of circumstances, in the absence of other supporting documentation, the Department is not able to agree that Taxpayers are not responsible for the additional Indiana income tax which is calculated based on the verifiable federal adjusted gross income.

FINDING

Taxpayer's protest is respectfully denied.

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