

**Letter of Findings: 01-20160015, 01-20150661
Individual Income Tax
For the Years 2011-2013**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Shareholders failed to provide relevant documents to show that the assessments are incorrect.

ISSUE

I. Income Tax - Imposition.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-4; IC § 6-3-2-1; IC § 6-3-1-3.5; [45 IAC 3.1-1-2](#); [45 IAC 3.1-1-7](#); [45 IAC 3.1-1-66](#); I.R.C. § 1366; 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); Indiana Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014).

Taxpayers protest the assessment of additional income tax.

STATEMENT OF FACTS

Taxpayers are shareholders of an Indiana S Corporation ("Corporation"). The Corporation owns a gas station and convenience store located in Indiana. As shareholders of Corporation, Corporation's income (or loss) generally flows through to Taxpayers and Taxpayers report and remit income tax in their individual income tax returns.

The Indiana Department of Revenue ("Department") performed a corporate income tax audit of the Corporation for the 2011, 2012, and 2013 tax years. The Department reviewed the Corporation's business records. The Department determined that for tax year 2012, Corporation failed to report all fuel sales and expenses. The Department also determined that for tax year 2013, Corporation deducted excess taxes from fuel sales to arrive at taxable income and [Corporation] took less fuel expenses.

As a result of the audit, adjustments were made to fuel sales and costs, resulting in an increase in Corporation's taxable income for both 2012 and 2013. Since the additional income flows through to Taxpayers, the Department issued proposed assessments to Taxpayers for the additional adjusted gross income tax on their share of Corporation income, penalty and interest. Taxpayers protested the income tax assessments. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Income Tax - Imposition.

DISCUSSION

Pursuant to an audit, the Department assessed additional income tax, penalties and interest on Taxpayers' S corporation. These assessments flowed through to Taxpayers. Taxpayers now protest these assessments.

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 Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). The retail merchant "must keep books and records so that the department can determine the amount, if any, of the [retail merchant's] liability for that tax by reviewing

those books and records." IC § 6-8.1-5-4(a). Thus, a 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); see also *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes an adjusted gross income tax on all residents. IC § 6-3-2-1. A taxpayer's Indiana income is determined by starting with the federal income and making certain adjustments. IC § 6-3-1-3.5. Income from an S corporation flows through to the individual shareholders' personal income and is reported by the shareholders on their personal income tax returns. See I.R.C. § 1366. See also [45 IAC 3.1-1-66](#); [45 IAC 3.1-1-2\(14\)](#); [45 IAC 3.1-1-7\(6\)](#).

Taxpayers were assessed additional income tax based upon the adjustments made to the Corporation's adjusted gross income due to previously misreported fuel sales and costs. Taxpayers protested these assessments, arguing that certain of its convenience store costs were not included in expenses because Corporation could not provide proof of these costs during the audit. Taxpayers now purport to present such evidence and ask the Department to adjust the Corporation's assessments accordingly.

Upon review, however, of the audit report, it became evident that the Department did not adjust the cost of convenience store items as originally reported by Corporation. Rather, the audit's adjustments were to fuel sales and fuel costs for both tax years 2012 and 2013. As such, Taxpayers' newly presented evidence is not relevant to the audit adjustments and will have no bearing on the results of the audit.

In short, Taxpayers failed to show that the proposed assessments are incorrect.

FINDING

Taxpayers' protest is denied.

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