DEPARTMENT OF STATE REVENUE

01-20160102R.LOF

Letter of Findings: 01-20160102R
Individual Income Tax
For the Year 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Former Corporate Officer was subject to Indiana's individual income tax on money received in return for providing consulting services to that Indiana company.

ISSUE

I. Individual Income Tax - Indiana Source Income.

Authority: IC § 6-3-2-1(a); IC § 6-3-2-2(a)(4); IC § 6-3-2-2(a); IC § 6-8.1-5-1(c); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); 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. 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); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that payment he received from his former business was not subject to Indiana's individual income tax.

STATEMENT OF FACTS

Taxpayer is a former Indiana resident who filed a 2013 "Indiana Part-Year and Full-Year Nonresident Individual Income Tax Return" (IT-40PNR). The Indiana Department of Revenue ("Department") mailed Taxpayer a notice dated December 2014. The notice provided for "line-by-line change or changes" to the 2013 return. The adjustment to Taxpayer's return reflected the Department's determination that approximately $50,000 Taxpayer received during 2013 constituted "State Taxable Income."

Taxpayer disagreed with the adjustment arguing that the money should not have been "sourced" to Indiana but was earned from an out-of-state, successor business. Taxpayer submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Individual Income Tax - Indiana Source Income.

DISCUSSION

Taxpayer formerly lived in and operated a business in Indiana. In 2006, Taxpayer sold the business but agreed to provide "consulting services as deemed necessary by the new management for a period of 3 years."

During the three-year consulting period, Taxpayer's former business was sold to a larger, out-of-state company. Despite this second sale, Taxpayer was asked to "continue in the [consultation] role under the same terms and conditions as previously agreed . . . ."

Taxpayer explains that the agreement to provide consulting services did not require that Taxpayer "attend meetings, meet with customers or personnel, or provide any services in the office of [former business] or at any location within the State of Indiana." Instead, Taxpayer maintains that the $50,000 payment should be sourced to the location of the out-of-state acquiring company.

All tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid, and each

taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position 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 reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we 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).

Indiana imposes an income tax on "the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a).

IC § 6-3-2-2(a) provides the rule for determining whether income earned by a nonresident is subject to Indiana's income tax. The statute provides in 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;
> (4) compensation for labor or services rendered within this state; and
> (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.

The issue is whether the $50,000 consultation fee was subject to Indiana's income tax. Taxpayer states that the "[b]urden of proof rests with the Department to show that [Taxpayer was] taxable on the income received as Indiana income." The Department does not agree with Taxpayer's contention. Although the Department's $50,000 adjustment resulted in a decrease in the amount of refund to which Taxpayer would have otherwise been entitled, the adjustment was nonetheless an "assessment" because it resulted in an increase in the amount of income the Department maintains was subject to tax. As such, IC § 6-8.1-5-1(c) imposes on Taxpayer the responsibility of establishing here that the Department's assessment was "wrong."

What services did Taxpayer's consultation agreement with his former Indiana company require him to perform? Was he required by the agreement to make on-site visits, review contracts, consult on the development of new products and services, or advise on personnel decisions? Was there a written agreement between him and his former company? Was there a written agreement between Taxpayer and the acquiring company? Taxpayer is silent on these issues other than to provide an affidavit purporting to verify that Taxpayer did not "perform or carry out any of the duties or responsibility of any corporate or executive management position . . . ." The Department does not agree that Taxpayer has met his burden of providing "documentation explaining and supporting his or her challenge . . . ." Scopelite 939 N.E.2d at 1145.

Taxpayer received a payment of approximately $50,000 from an Indiana company in return for providing consulting services to that company. That payment is documented by a form W-2 setting out "compensation" received from Taxpayer's original Indiana company. As such, the Department did not err in determining that the payment constituted Indiana source income as provided for under IC § 6-3-2-2(a)(4). Taxpayer has failed to meet his burden of establishing that the Department's decision was wrong.

FINDING

Taxpayer's protest is respectfully denied.

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An html version of this document.