

**Letter of Findings: 01-20160273
Individual Indiana Income Tax
For the Years 2009, 2010, 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department denied Individual's protest challenging an assessment of additional individual income tax; the assessment was based upon information provided by the federal prosecuting attorney and the Individual's plea of guilty to participating in a tax and securities criminal conspiracy; the Department did not err in relying on the information it obtained.

ISSUE

I. Individual Income Tax - Best Information Available Assessment.

Authority: IC § 6-3-2-1(a); IC § 6-8.1-5-1(b); IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Department overestimated the amount of income he earned from his participation in a tax and fraudulent securities conspiracy scheme.

STATEMENT OF FACTS

Acting upon information provided by the Office of the U.S. Attorney for the Southern District of Indiana, the Indiana Department of Revenue ("Department") issued Taxpayer "Proposed Assessments" of additional Indiana income tax for the years 2009 through 2012.

The assessments were based on Taxpayer's plea of guilty for his participation in a multi-state scheme to defraud biodiesel buyers and U.S. taxpayers by fraudulent selling biodiesel incentives. In the plea agreement, Taxpayer admitted to conspiracy, submitting false claims to the Internal Revenue Service, wire fraud, making false claims "under the Clean Air Act," and obstruction of justice. Under the terms of the plea agreement, Taxpayer acknowledged that he was required to pay "full restitution" to the various victims of his fraud and that "owe[d] taxes and penalties to the United States Treasury for the offenses charged." Taxpayer was sentenced to and is currently serving time in a federal prison.

Information available publicly from the U.S. Securities and Exchange Commission indicates that the \$100 million dollar scheme "generated gross illicit profits of more than \$50 million"

I. Individual Income Tax - Best Information Available Assessment.

DISCUSSION

Taxpayer argues he did not receive any of the profits obtained as a result of the tax and securities conspiracy and that his co-conspirators should be required to pay any assessment of additional income tax.

As with any assessment of additional tax, Taxpayer bears the burden of establishing that the Department's adjustment was 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 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).

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).

The Department issued the proposed assessments under the authority of IC § 6-8.1-5-1(b).

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. (Emphasis added).

Taxpayer asserts that he did not benefit from his participation in the tax and fraudulent securities scheme and that his co-conspirators should be required to pay any additional Indiana tax. Taxpayer states that the only benefit he derived from participating in the scheme was a regular paycheck, that he filed Indiana income tax returns reporting this income, and that he paid tax on any money received from his regular salary.

The Department is unable to agree that Taxpayer has established he did not benefit from the criminal conspiracy, that he should not be responsible for payment of the tax, or that the Department erred in making the assessments.

FINDING

Taxpayer's protest is denied.

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