

**Supplemental Letter of Findings: 01-20160241**  
**Indiana Individual Income Tax**  
**For The Tax Years 2012, 2013 & 2014**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual criminally charged with securities fraud for embezzling money provided sufficient evidence that the Department's previous best information available assessment was based upon incorrect information.

### ISSUE

#### **I. Individual Income Tax - Best Information Available Assessment.**

**Authority:** IC § 6-8.1-5-1; 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 protests the amount of the proposed assessment of individual income tax based upon criminal charges alleging that he had embezzled funds from his employer and a client.

### STATEMENT OF FACTS

Taxpayer is a former employee of an Indiana-based retail business and former partner of a wealth management firm. In 2015, Taxpayer was criminally charged with securities fraud for allegedly embezzling money from his employer and a client as part of a fraudulent investment scheme. Taxpayer was alleged to have used the embezzled funds for personal expenses from 2012 to 2014. Acting upon information obtained from the county prosecutor's office, the Indiana Department of Revenue ("Department") issued Taxpayer and Taxpayer's former spouse proposed assessments of additional Indiana income tax for tax years 2012, 2013 and 2014. Taxpayer and his ex-wife finalized their divorce in 2015, but she had no involvement in the embezzlement activities during their marriage. For purposes of this Supplemental Letter of Finding, "Taxpayer" refers only to the husband.

Taxpayer protested the amount of the proposed assessments, but agreed that some additional tax would be owed. An administrative hearing was held and Taxpayer was provided additional time within which to submit documentation to substantiate his claim that the best information available assessment ("BIA assessment") was based upon an amount greater than what he was actually charged with embezzling, and was therefore incorrect. Taxpayer failed to submit this additional documentation because the criminal matter had not yet been resolved, and a Letter of Finding was issued on September 15, 2016, denying Taxpayer's protest.

Taxpayer requested a rehearing, which was granted by the Department. An in-person hearing was held at which Taxpayer provided additional information in support of his protest. This Supplemental Letter of Findings results. Additional facts will be addressed below as necessary.

#### **I. Individual Income Tax - Best Information Available Assessment.**

### DISCUSSION

Taxpayer protests the proposed assessments and argues that the amount of additional income attributed to him by the Department is incorrect. Taxpayer asserts that the proposed assessments were based on amounts greater than the total amount that he was charged with embezzling.

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

The Department issued the proposed assessments under the authority of IC § 6-8.1-5-1(b), which states:

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).

The Department's original BIA assessment assessed tax on an additional \$333,000 of income attributed to Taxpayer for each tax year at issue, for a total of \$999,000. Following the rehearing, Taxpayer provided a copy of his order of probation he entered into with the county criminal court. The order provides that Taxpayer is to pay \$616,858 in restitution. The original BIA assessment was well in excess of what Taxpayer was actually charged with embezzling, and Taxpayer has presented documentation showing the correct amount.

Therefore, Taxpayer has met his burden under IC § 6-8.1-5-1(c) of proving that the Department's proposed assessment was wrong. The Department shall adjust the proposed assessments to reflect the restitution amount stated in Taxpayer's order of probation.

### **FINDING**

Taxpayer's protest is sustained. As stated in the previous Letter of Findings 01-20160241 (September 15, 2016), Taxpayer's former spouse shall have no liability for the proposed assessment of tax imposed on Taxpayer.

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