

## DEPARTMENT OF STATE REVENUE

01-20160501R.LOF  
01-20160502.LOF**Letter of Findings: 01-20160501R; 01-20160502  
Individual Income Tax  
For the Years 2013, 2014, 2015**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Illinois Resident failed to establish that- as a nonresident -gambling winnings acquired at an Indiana casino did not constitute adjusted gross income Illinois Resident derived from a source within this state.

**ISSUE****I. Individual Income Tax - Indiana Gambling Income.**

**Authority:** IC § 6-3-2-1(a); IC § 6-3-2-2(a); IC § 6-3-5-1; 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); [45 IAC 3.1-1-115](#); 35 Ill. Comp. Stat. 5/601(b)(3); 86 Ill. Admin. Code 100.3300(b)(2); 2016 Illinois Publication 130.

Taxpayer argues that she is entitled to an Indiana credit for Illinois taxes paid on gambling income obtained from an Indiana casino.

**HOLDING**

The Department held that it was not required to grant a credit against Indiana income taxes due on gambling income earned at an Indiana casino for income taxes paid to the state of Illinois but that it was Illinois' responsibility to grant a credit against Illinois taxes for taxes properly owed Indiana.

**STATEMENT OF FACTS**

Taxpayer is an Illinois resident who gambles at an Indiana casino. Taxpayer filed Indiana IT-40PNR ("Indiana Part-Year or Full-Year Nonresident") tax returns for 2013, 2014, and 2015. On those Indiana returns, Taxpayer reported gambling income won at the Indiana casino.

Taxpayer claimed a "credit" for taxes paid to Illinois against the taxes owed on the Indiana returns.

The Indiana Department of Revenue ("Department") denied Taxpayer the Illinois credit. The denial of the credit resulted in an assessment of additional Indiana income tax. For one of the three years, the denial of the credit resulted in the denial of a refund of taxes withheld on her behalf by the Indiana casino.

In a letter dated June 2016, the Department stated:

The Department has reviewed your return and determined that credit for taxes paid to another state isn't allowed. Since you are [an] Illinois resident and are not reporting your Illinois income on the Indiana return, you can't claim this credit.

Taxpayer disagreed with the assessments and the denial of the refund. Taxpayer submitted a protest challenging the Department's decisions. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

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**I. Individual Income Tax - Indiana Gambling Income.**

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**DISCUSSION**

The issue is whether Taxpayer - an Illinois resident who files Illinois returns and pays Illinois taxes on the Indiana gambling income - is entitled to take a "credit" for those Illinois taxes against the amount of Indiana tax reported on her Indiana returns.

Since the Department's decision resulted in an assessment of additional Indiana income, Taxpayer has an initial threshold it must overcome in order to prevail on her argument. Under Indiana law, it is the Taxpayer's responsibility to establish that the existing tax 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). 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). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] 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). Thus, interpretations of Indiana tax law contained within this decision, as well as the preceding audit, are entitled to deference.

Taxpayer apparently relies on IC § 6-3-5-1 which provides as follows:

The tax imposed by [IC 6-3-2](#) on the adjusted gross income derived from sources within the state of Indiana by persons who are nonresidents of this state, shall not be payable if the laws of the state or territory of residence of such persons, at the time such adjusted gross income was earned in this state, contained a reciprocal provision by which residents of this state were exempted from taxes imposed by such state on income earned in such state.

Taxpayer explains:

As you are aware, Illinois does not allow a credit for taxes paid on gambling winnings by an Illinois resident to other states. Also, Illinois does not tax nonresidents on Illinois source gambling winnings. On the other hand, Indiana does allow nonresidents a credit for taxes paid to other states. The credit is allowed where the nonresident's state of residence (Illinois in this case) taxes its residents on the income they earn in other states but does not tax the other states residents (Indiana residents in this case) on the income. Therefore, because Illinois taxes residents on Indiana gambling winnings from Indiana while exempting Indiana residents on Illinois winnings, Indiana [should] allow the credit paid on the Indiana return.

Taxpayer did not specifically cite to the Illinois provision in making her argument, but the Department takes note of Illinois law set out at 86 Ill. Admin. Code 100.3300(b)(2) (2000) which states:

An item of income or deduction which is taken into account in the computation of base income for the taxable year by a person other than a resident of Illinois, and which is not otherwise specifically allocated or apportioned, in the case of an individual, trust or estate, is not allocated to Illinois.

The Department points to February 2016 Illinois Publication 130 ("Who is required to withhold Illinois income tax") directed at Illinois casinos. The publication provides as follows:

You must withhold Illinois Income tax from gambling winnings you pay Illinois residents any time the winnings are subject to federal income tax withholding requirements and are not subject to another state's withholding requirements. You are not required to withhold Illinois Income Tax from nonresidents or if you are required to withhold another state's tax from an Illinois residents.

(Emphasis added).

Elsewhere, the same publication provides, "Resident winners are taxed by Illinois. Nonresidents are not taxed

unless they are professional gamblers."

However, the Department finds Taxpayer's reliance on IC § 6-3-5-1 is misplaced and points to [45 IAC 3.1-1-115](#) which provides:

Reciprocity Agreements. Reciprocal income tax agreements now exist between Indiana and the states of Illinois, Kentucky, Michigan, Ohio, Pennsylvania and Wisconsin. The agreements provide that Indiana will not impose its adjusted gross income tax on salaries, wages and commissions earned by legal residents of these states in Indiana and they in turn will not impose their individual income tax on wages, salaries and commissions earned by legal residents of Indiana in those states. Employees resident in any of the above-mentioned states and working in Indiana must submit to their Indiana employer an affidavit as to their legal residence as proof that no withholding of Indiana taxes is required

(Emphasis added).

Although the Department recognizes that Illinois has not been a "reciprocity state" since January 1, 1998, the Department points out that the concept of reciprocity between states - by which each state "recognizes" and acknowledges the taxes paid by each other's residents - is limited to "salaries, wages and commissions." Gambling winnings are neither "salaries, wages nor commissions."

Taxpayer has failed to establish that Indiana's imposition of income tax on gambling income violates Indiana law because there is no indication that Illinois will not allow a credit for taxes paid Indiana. To the contrary, 35 Ill. Comp. Stat. 5/601(b)(3) allows Illinois residents a credit equal to the aggregate amount of tax which is imposed upon or measured by income and which is paid by a resident for a taxable year to another state or states on income which is also subject to tax under Illinois law.

Under Indiana law, the Indiana casino winnings constitute "Indiana source income" subject to this state's individual income tax. IC § 6-3-2-2(a). As explained in IC § 6-3-2-1(a), "Each taxable year, a tax . . . of adjusted gross income is imposed upon the adjusted gross income every resident, and that part of the adjusted gross income derived from sources within Indiana of every nonresident person." Taxpayer has failed to establish that - as a nonresident - the gambling winnings did not constitute adjusted gross income she derived from a source within this state.

### **FINDING**

Taxpayer's protest is respectfully denied.

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