

Letter of Findings: 01-20160594.LOF
Individual Income Tax
For the Year 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual remained responsible for taxes attributable to a joint individual income tax return signed by Individual and her former husband; the Department was not a party to an agreement which adjudicated the rights and obligations of Individual and former husband.

ISSUE

I. Individual Income Tax - Joint Tax Return Liability.

Authority: IC § 6-3-4-2(d); 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 she is not responsible for paying taxes attributable to her and her former husband's joint 2012 Indiana income tax return.

STATEMENT OF FACTS

Taxpayer and her now former husband ("Taxpayers") signed and filed a 2012 Indiana joint IT-40 individual income tax return. The return was signed June 2016.

In December 2013, the DeKalb Circuit Court issued a "Marital Settlement Agreement" indicating that Taxpayer's marriage had undergone an "irretrievable breakdown" and that the parties had not lived together since February 2013. The Agreement noted that Taxpayer had filed an action "for dissolution of marriage"

The Agreement stated that husband "had paid his portion of all income taxes, state, and federal on all returns filed by the parties" The Agreement provided that if additional tax liability [was] assessed as a result of [their] joint or separate return [husband] would fully indemnify and hold harmless [Taxpayer] for any liability, tax deficiency, penalty or interest together with any costs expended in the defense of any claimed tax deficiency"

The Agreement further provided that husband would be awarded ownership of the parties' on-line business and be "responsible for any outstanding or new indebtedness either he or the business [would] incur before or after the date the [the] agreement"

The Indiana Department of Revenue ("Department") issued Taxpayers a proposed assessment of additional income tax for the year 2012. The assessment was greater than the amount specified in the original 2012 joint return. The original return reported approximately \$60,000 in income; the adjusted return reported approximately \$700,000 in previously unreported income. This assessment was triggered by the filing of a form 1099-K ("Merchant Card and Third Party Network Payments").

Taxpayer disagreed with the proposed assessment and submitted a protest to that effect. An administrative hearing was conducted and this Letter of Findings results.

I. Individual Income Tax - Joint Tax Return Liability.

DISCUSSION

Taxpayer argues that she is not responsible for the assessment and points to the DeKalb Circuit Court's "Marital Settlement Agreement." Taxpayer blames her former husband for not reporting correctly income earned by the parties' on-line business.

The proposed assessment constitutes 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).

IC § 6-3-4-2(d) provides as follows:

Where a joint return is made by husband and wife pursuant to the Internal Revenue Code, a joint return shall be made pursuant to this article. Where a joint return is filed by a husband and wife hereunder, one spouse shall have no liability for the tax imposed by this article upon the income of the other spouse.

Under Indiana law, Taxpayer has no responsibility for the additional tax reported on the 1099-K, if the previously unreported additional income now reported was entirely that of the husband. However, Taxpayer has produced nothing of any relevance establishing that the income derived from their on-line business was entirely that of her husband.

As to the DeKalb Circuit Court's "Marital Settlement Agreement," the Department notes that it was not a party to the agreement nor is it bound by the terms of that agreement. The agreement adjudicated the rights and obligations of Taxpayer and her former husband. Taxpayer must seek the appropriate forum in order to enforce the terms of the Agreement. Whatever that forum may or may not be, it is decidedly not the Indiana Department of Revenue. Taxpayers are jointly and severally responsible for paying the assessment.

FINDING

Taxpayer's protest is respectfully denied.

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