

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

### 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.

### ISSUE

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

**Authority:** IC § 6-8.1-5-1(c); IC § 6-3-3-3(b); 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); 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.

### 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. A Letter of Findings was issued December 2016 denying Taxpayer's protest. Taxpayer disagreed with the decision and requested a rehearing. That rehearing was granted, Taxpayer's representative reiterated Taxpayer's argument, and this Supplemental Letter of Findings results.

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

### 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.

In its original protest letter, Taxpayer explained as follows:

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.

Although Taxpayer does not cite to the provision, 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."

Taxpayer argues that the December 2016 Letter of Findings misstated Taxpayer's argument and now points to IC § 6-3-3-3(b) which provides as follows:

Whenever a nonresident person has become liable for tax to the state where he resides upon his income for the taxable year derived from sources within this state and subject to taxation under [IC 6-3-2](#), the proportion of tax paid by him to the state where he resides that his income subject to taxation under [IC 6-3-2](#) bears to his income upon which the tax so payable to the other state was imposed shall be credited against the tax payable by him under [IC 6-3-2](#), but only if the laws of the other state grant a substantially similar credit to residents of this state subject to income tax under the laws of such other state, or impose a tax upon the

income of its residents derived from sources in this state and exempt from taxation the income of residents of this state. No credit shall be allowed against the amount of the tax on any adjusted gross income taxable under [IC 6-3-2](#) that is exempt from taxation under the laws of the other state.

As Taxpayer summarizes, "[P]ursuant to IC § 6-3-3-3(b), Taxpayer is entitled to a proportional credit for taxes paid to the State of Illinois."

Illinois provides a specific "carve out" exempting from Illinois income taxes casino winnings obtained by an Indiana resident at an Illinois casino. However, the Department does not agree that this narrow "carve out" triggers the application of IC § 6-3-3-3(b) because the language cited by Taxpayer - "derived from sources in this state and exempt from taxation the income of residents of this this state" - contemplates that the "other state" grants a blanket exemption for all income derived by Indiana residents. Illinois does not exempt Indiana residents from paying income tax on income derived in Illinois and the specific relief sought by Taxpayer is not found within the statute. In this case, the relief is to be found at 35 Ill. Comp. Stat. 5/601(b)(3) which grants Illinois residents a credit equal to the aggregate amount of tax 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.

### FINDING

Taxpayer's protest is respectfully denied.

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