

**Letter of Findings: 01-20160580
Individual Income Tax
For the Year 2011**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Although a non-resident during the year in which he obtained the "cancellation of debt" on his Indiana residence, Individual was required to "add back" that cancellation amount in calculating his 2011 Indiana adjusted gross income.

ISSUE

I. Individual Income Tax - Indiana Source Income.

Authority: I.R.C. § 108; IC § 6-3-6-5.5; IC § 6-3-6-5.5(a)(25); IC § 6-3-2-1(a); IC § 6-8.1-5-1(c); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 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 he was not required to file a 2011 Indiana income tax return because he did not have Indiana source income that year.

STATEMENT OF FACTS

Taxpayer is a current Indiana resident previously having moved from Indiana to California in 2008 but returning to this state in 2012. The Indiana Department of Revenue ("Department") sent Taxpayer an undated letter stating that "You must file a 2011 IT-40 PNR Indiana Part-Year of Full-Year Nonresident Individual Income Tax Return reporting your Indiana sourced income as you have done previously." The Department then proceeded to issue Taxpayer a proposed assessment of 2011 Indiana income tax.

Taxpayer disagreed and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer explained the basis for the protest.

I. Individual Income Tax - Indiana Source Income.

DISCUSSION

The issue is whether Taxpayer received Indiana source income during 2011 and was required to file an Indiana IT-40 PNR return reporting that income. Taxpayer argues that the only Indiana "income" he obtained during 2011 while living outside the state stemmed from the "cancellation of debt" associated with his Indiana home which was discharged during his bankruptcy proceedings.

Taxpayer currently lives in Indiana. The Department assessed Taxpayer additional income tax based on the "best information available" on the ground that Taxpayer received income reportable on the Indiana return.

Taxpayer previously lived in Indiana and filed Indiana income tax returns here. Taxpayer states that he left Indiana in 2008 after suffering financial setbacks, after seeking bankruptcy protection, and after having his Indiana home foreclosed upon. Taxpayer filed an Indiana IT-40 income tax return for 2008. Taxpayer presumably filed California income tax returns in 2009 and 2010.

Taxpayer filed a 2011 California income tax return and a 2011 federal return listing a California residence, and

received income from a California employer.

Taxpayer returned to Indiana in 2012 and resumed filing Indiana tax returns.

All tax assessments are prima facie evidence that the Department's claim for the 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).

Indiana imposes an income tax "upon 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).

Taxpayer explains he was not required to file a 2011 return because his only income that year consisted of "Cancellation of Debt Income" documented on a form 1099c ("cancellation of debt") and that he had no other income that year.

I.R.C. § 108 provides rules on income from discharge of indebtedness.

(a) Exclusion from gross income.--

(1) In general.--Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if--

(A) the discharge occurs in a title 11 case,

(B) the discharge occurs when the taxpayer is insolvent,

(C) the indebtedness discharged is qualified farm indebtedness,

(D) in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness, or

(E) the indebtedness discharged is qualified principal residence indebtedness which is discharged--

(i) before January 1, 2017, or

(ii) subject to an arrangement that is entered into and evidenced in writing before January 1, 2017.

As this rule sets out for federal income tax purposes, indebtedness is dischargeable in bankruptcy on a "qualified principal residence."

However, Indiana has a different rule. IC § 6-3-6-5.5 is Indiana's statute which provides various add-backs or modifications in calculating adjusted gross income for Indiana purposes. A portion of that statute requires the taxpayer to:

[a]dd the amount excluded from gross income under Section 108(a)(1)(E) of the Internal Revenue Code for the discharge of debt on a qualified principal residence. IC § 6-3-6-5.5(a)(25).

For Indiana purposes, cancellation of debt on a resident or non-resident's principal home is included in the taxpayer's gross income in calculating that person's adjusted gross income." Taxpayer needs to complete the missing 2011 return.

FINDING

Taxpayer's protest is respectfully denied.

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