

**Letter of Findings: 01-20160609**  
**Individual Indiana Income Tax**  
**For the Years 2010-2012**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department denied Individual's protest challenging an assessment of additional individual income tax; the assessment was based on information provided by a federal prosecuting attorney and the Individual's plea of guilty to filing false or fraudulent tax returns on behalf of his customers; the Department did not err in relying on the information it obtained.

### ISSUE

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

**Authority:** IC § 6-3-2-1; 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); Black's Law Dictionary (9th ed. 2009).

Taxpayer protests the income tax assessed.

### STATEMENT OF FACTS

Acting upon information provided by the Office of the U.S. Attorney for the Southern District of Indiana, the Indiana Department of Revenue ("Department") issued Taxpayer "Proposed Assessments" of additional Indiana income tax for the years 2010 through 2012.

The assessments were based on Taxpayer's plea of guilty for procuring the making of false federal income tax returns for the customers of his tax preparer business. Under the terms of the plea agreement, Taxpayer acknowledged that he was required to pay the tax that the Internal Revenue Service lost due to these false returns.

Taxpayer challenged the assessment of additional tax. An administrative hearing was held and this Letter of Findings results.

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

### DISCUSSION

Taxpayer ran and owned several tax preparation companies. Taxpayer would prepare customers' returns and immediately issue their refund for a fee based on the refund calculated. Taxpayer would then receive its customers' refund check from the Internal Revenue Service ("IRS"). The U.S. Attorney's office determined that Taxpayer was filing fraudulent and false returns on behalf of customers. The U.S. Attorney's office determined the tax loss from the fraudulent returns was \$1,501,000. The Department determined that Taxpayer was unjustly enriched by the \$1,501,000 and assessed income tax based on that amount for the years at issue. Taxpayer argues the amount paid to the IRS was restitution and any fees he received from the fraudulent returns was reported on his Indiana income tax returns. In addition, Taxpayer argues that the Department is outside of the statute of limitations to assess tax for the tax year 2009.

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

Indiana imposes an income tax on "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).

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

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).

In this case, Taxpayer argues that the amount paid pursuant to the plea agreement is restitution and that restitution is not income. Taxpayer does not cite to any authority stating that restitution is not income. Taxpayer also argues that he borrowed money to finance the refunds given to customers immediately. Taxpayer states that the amount repaid is represented in the loan he had already received, and any fees he received from the fraudulent refunds he reported on his Indiana income tax return.

Black's Law Dictionary defines restitution as:

1. A body of substantive law in which liability is based not on tort or contract but on the defendant's unjust enrichment.
2. Set of remedies associated with that body of law, in which the measure of recovery is usually based not on plaintiff's loss but defendant's gain.
3. Return of some specific thing to its rightful owner or status.
4. Compensation for loss; specially full or partial compensation paid by criminal to victim.  
1428 (9th ed. 2009).

Thus, by Black's definition of restitution, restitution can be viewed as income for tax purposes. Therefore Taxpayer is incorrect in stating that restitution is not income. Taxpayer was unjustly enriched by \$1,501,000 and therefore that enrichment was properly viewed as income for Indiana income tax purposes.

Taxpayer provided the signed and filed plea agreement. The agreement states that, "The Defendant acknowledges that the tax loss for criminal prosecution purposes in this case is \$1,501,000. The Defendant will be ordered by the Court to pay the full criminal tax loss of \$1,501,000 to the Internal Revenue Service." The agreement does not mention the amount owed as being a repayment of loan or restitution. Taxpayer argues that the loss resulted from his customers' false returns. Taxpayer's fee arrangement, as stated above, was a percent of the refund issued to the customer. While the payment was not restitution, due to the Taxpayer's fee arrangement it is clear he received a benefit of \$1,501,000. Therefore, Taxpayer was properly assessed Indiana income tax.

Taxpayer also argued that the Department was outside the statute of limitation to assess income tax. The Department billed Taxpayer for 2010-2012 because those were the years in which Taxpayer was unjustly enriched by the fraudulent returns. Since the Department did not assess tax for 2009, therefore, Taxpayer's protest on the statute of limitations is moot. Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessments incorrect.

## FINDING

Taxpayer's protest is denied.

*Posted: 05/31/2017 by Legislative Services Agency*  
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