

**Final Order Denying Refund: 01-20170013R
Individual Income Tax
For the Year 2015**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Indiana Resident was subject to this state's adjusted gross income tax on money received while residing in Indiana even though the income was attributable to services performed outside this state during a time in which Indiana Resident lived and worked outside Indiana.

ISSUE

I. Individual Income Tax - Taxable Income.

Authority: IC § 1-1-4-1; IC § 1-1-4-1(1); IC § 6-3-2-1(a).

Taxpayer argues that he was not subject to tax on income received from a previous employer on the ground that the income constituted a lump-sum payment for 2013 through 2015 back wages.

STATEMENT OF FACTS

Taxpayer is a current Indiana resident having moved to this state from Texas in July 2015. Taxpayer filed a 2015 Indiana individual income tax return April 2016. Taxpayer subsequently filed an Indiana Amended Individual Income Tax Return ("IT-40X") on November 2016. On that return, Taxpayer excluded income received from his Texas employer. The amended return sought a refund of approximately \$2,023. The Indiana Department of Revenue ("Department") responded in a letter dated December 2016. The letter stated:

The Indiana Department of Revenue reviewed your claim for refund and must deny it because: Per the return you had two W-2s with Indiana income. You must pay tax on both W-2s.

Taxpayer disagreed with the Department's decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer explained the basis for the protest. This Final Order Denying Refund results.

I. Individual Income Tax - Taxable Income.

DISCUSSION

Taxpayer argues that he was not subject to Indiana income tax on money received from his former Texas employer. Taxpayer admits that he received the money in a letter from his former employer in August 2015 after he returned to Indiana. However, Taxpayer explains that the money was received for work he performed for his Texas employer for the "workweeks ending May 5, 2013 through May 3, 2015." Taxpayer provided a letter from his former employer stating, "During a recent review, [Texas employer] determined that you worked in a job that has now been reclassified to "Salaried Non-Exempt." The letter stated that the August payment "represents full payment of unpaid wages due to you, less applicable taxes and other legal deductions"

The issue is whether the money Taxpayer received in August 2015 is subject to 2015 Indiana adjusted gross income tax. Taxpayer argues he is not subject to Indiana tax on the ground that the money was attributable to work performed in Texas before moving to Indiana.

At the outset, it is important to note what this question is not about. This is not a residency issue. There is no dispute that Taxpayer is and was an Indiana resident in August 2015 and for 23 years before he began working in Texas.

IC § 6-3-2-1(a) provides as follows:

Each taxable year, a tax at the following rate of adjusted gross income is imposed 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 § 1-1-4-1 provides the fundamental standard for the "construction of all statutes of this state" In part, the law provides that "words and phrases shall be taken in their plain, or ordinary and usual sense." IC § 1-1-4-1(1). Under that standard, the Department presumes that the legislature, in drafting IC § 6-3-2-1(a), said what it meant and meant what it said. In this case, the language of IC § 6-3-2-1(a) is clear. Indiana residents are subject to this state's income tax on their adjusted gross income. Indiana does not impose its income tax on the work performed in Texas during 2013 through 2015; it imposes the tax on the income derived from that work. In this case Taxpayer received the back-pay income during the time he was a resident of Indiana. Whether the pay was attributable to activities performed outside Indiana or for activities conducted during an earlier period is irrelevant.

FINDING

Taxpayer's protest is respectfully denied.

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