

**Letter of Findings: 01-20160570
Individual Income Tax
For the Years 2008 through 2014**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Indiana Medical Care Provider failed to establish that the Department's assessment of individual income tax was overstated; Medical Care Provider's income "flowed through" from businesses owned and operated by Medical Care Provider.

ISSUE

I. Indiana Individual Income Tax - Flow-Through Business Income.

Authority: IC § 6-3-4-11; IC § 6-8.1-5-1(c); Indiana Dep't of State Rev. 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); Letter of Findings 02-20160571; 02-20160572 (June 28, 2017).

STATEMENT OF FACTS

Taxpayer is an individual who operates an alternative health care practice and other businesses. The Indiana Department of Revenue ("Department") conducted a sales, use, and income tax audit of the businesses. The Department found that Taxpayer owned residential and commercial rental properties, was the owner and operator of a sole-proprietorship, and was a member of two business partnerships. The Department found that Taxpayer had failed to file Indiana individual income tax returns for the years 2008 through 2014. As a result of receiving income from the different businesses, the Department assessed Taxpayer individual income tax.

Taxpayer disagreed with the assessments arguing that the amount of income attributable to his businesses was overstated thereby inflating the amount of individual income "flowing through" to Taxpayer.

Separately, the Department addressed protests challenging assessments of corporate income assessments against two of Taxpayer's businesses. A Letter of Findings addressing those assessments was issued June 28, 2017.

An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings, addressing the individual income tax assessments, results.

I. Indiana Individual Income Tax - Flow-Through Business Income.

DISCUSSION

Taxpayer disagrees with the individual income tax assessments on the ground that the Department overstated the amount of income "flowing through" from Taxpayer's various Indiana businesses.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment 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); see also *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Because Taxpayer's businesses are operated as S-corporations, IC § 6-3-4-11 imposes on Taxpayer the responsibility for paying Indiana individual income tax on his share of the income earned from the multiple Indiana businesses. The statute provides in part:

A partnership as such shall not be subject to the adjusted gross income tax imposed by [IC 6-3-1](#) through [IC 6-3-7](#). Persons or corporations carrying on business as partners shall be liable for the adjusted gross income tax only in their separate or individual capacities. In determining each partner's adjusted gross income, such partner shall take into account his or its distributive share of the adjustments provided for in [IC 6-3-1-3.5](#). (Emphasis added).

Letter of Findings 02-20160571; 02-20160572 (June 28, 2017) addressed issues related to income attributable to two of Taxpayer's businesses. In that June 28, 2017, decision the Department found that the businesses failed to establish that the corporate tax assessments were overstated.

Taxpayers failed to provide adequate documentation to substantiate the various expenses claimed on their corporate income tax returns that were disallowed by the Department. Taxpayers were repeatedly asked for invoices, receipts, and loan documentation detailing the claimed expenses, but failed to provide the relevant documentation as requested. Documentation provided during the protest was the same as that provided during the audit, and therefore did not satisfy the burden of showing that the assessments issued as a result of the audit were wrong. The Department cannot substitute its findings with unsubstantiated estimates from Taxpayers. Therefore, Taxpayers have not shown that the Department's adjustments were incorrect. Id.

As to Taxpayer's individual income tax assessments, the Department declines to depart from the reasoning or conclusions set out in the June 28 decision. That decision found that the businesses were not entitled to claim numerous business expenses because the claimed expenses were undocumented and/or speculative. Therefore, Taxpayer has failed to meet his statutory burden under IC § 6-8.1-5-1(c) of establishing that the individual income assessments were "wrong."

Although the Department's Audit Division is requested to review the W-2 forms submitted during the protest and assure that Taxpayer is credited for the amount of withholding tax indicated on those forms, Taxpayer's substantive arguments challenging the tax assessments are denied.

FINDING

Taxpayer's protest of the individual income tax assessments is denied.

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