

Letter of Findings: 01-20170696
Income Tax
For the Year 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Married couple were correctly denied a scholarship tax credit since they made their contribution directly to a school instead of making it to a scholarship-granting organization as is required by statute.

ISSUE

I. Income Tax–Scholarship Credit.

Authority: IC § 6-8.1-5-1; IC § 6-3.1-30.5-3; IC § 6-3.1-30.5-4; IC § 6-3.1-30.5-7; IC § 6-3.1-30.5-11; IC § 6-3.1-30.5-12; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayers protest the denial of a tax credit.

STATEMENT OF FACTS

Taxpayers filed a joint Indiana income tax return for the tax year 2015. Taxpayers claimed a tax credit on that 2015 return. The Indiana Department of Revenue ("Department") determined that Taxpayers were ineligible for the tax credit. Taxpayers protested the Department's determination. An administrative telephone hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Income Tax–Scholarship Credit.

DISCUSSION

As a threshold issue, it is 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 Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). 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, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

At issue in the protest is the "School Scholarship Credit." Taxpayers, per their protest letter, made a gift of \$2,500 to a school in Indiana that Taxpayers state is "a fully accredited K-12 school" and that the instructions for the gift was "to apply the full amount to student scholarships." Taxpayers state the school did this and that they "received the proper acknowledgement from the school." Taxpayers state that they subsequently learned that the "check should have been sent to [the] 'Institute for Quality Education, Inc.'" Taxpayers state that their intentions were to help "needy students" via the \$2,500 scholarship and that they should not "be denied on a mere technicality."

The school scholarship tax credit that Taxpayers are referring to was enacted in 2009. The relevant statutes can be found at IC § 6-3.1-30.5 *et seq.* For instance, IC § 6-3.1-30.5-3 states:

As used in this chapter, "scholarship granting organization" refers to an organization that:

- (1) is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; and
- (2) conducts a school scholarship program without limiting the availability of scholarships to students of only one (1) participating school (as defined in [IC 20-51-1-6](#)).

And IC § 6-3.1-30.5-4 states:

As used in this chapter, "school scholarship program" refers to a scholarship program certified by the department of education under [IC 20-51](#).

IC § 6-3.1-30.5-7 provides:

- (a) A taxpayer that makes a contribution to a scholarship granting organization for use by the scholarship granting organization in a school scholarship program is entitled to a credit against the taxpayer's state tax liability in the taxable year in which the taxpayer makes the contribution.
- (b) A taxpayer is not entitled to a credit under this chapter for a contribution to a scholarship granting organization that is used to provide a scholarship or other assistance to a child participating in the early education grant pilot program under [IC 12-17.2-7.2](#).

Also, IC § 6-3.1-30.5-11 is of relevance:

To apply a credit against the taxpayer's state tax liability, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns *in the manner prescribed by the department*. The taxpayer shall submit to the department the information that the department determines is necessary for the department to determine whether the taxpayer is eligible for the credit.
(*Emphasis added*).

The Department's IT-40 Full-Year Resident Individual Income Tax Booklet for 2015 states in relevant part:

School Scholarship Credit 849

A credit is available for donations to certain scholarship-granting organizations (SGOs). The amount of credit is equal to 50[percent] of the amount of the contribution. While there are no limits to how much a donor can contribute to a qualified SGO, the entire tax credit program cannot award more than \$8.5 million in credits per state fiscal year (July 1 - June 30).

To qualify for the credit, you must make a contribution to a scholarship granting organization that is certified by the Department of Education. Visit the Indiana Department of Education's website at www.doe.in.gov/choice/school-scholarships for additional information.

The approved credit must be reported on Schedule IN-OCC, found at www.in.gov/dor/5333.htm. Make sure to enclose this schedule with your tax filing. Also, see the **Combined Limitation** on page 49.
(**Emphasis** in the original).

Further, IC § 6-3.1-30.5-12 states:

A contribution *to a scholarship granting organization* shall be treated as having been made for use in a school scholarship program if:

- (1) *the contribution is made directly to a scholarship granting organization*; and
- (2) either:
 - (A) not later than the date of the contribution, the taxpayer designates in writing to the scholarship granting organization that the contribution is to be used only for a school scholarship program; or
 - (B) the scholarship granting organization provides the taxpayer with written confirmation that the contribution will be dedicated solely for use in a school scholarship program.

(*Emphasis added*).

In the present case Taxpayers did not claim the credit in the manner required by the statutes—i.e., the contribution has to be "made directly to a scholarship granting organization." Compliance with the applicable statutes is a requirement in order to be eligible to receive the scholarship tax credit.

FINDING

Taxpayers' protest is respectfully denied.

Posted: 11/29/2017 by Legislative Services Agency
An [html](#) version of this document.