

Supplemental Final Order Denying Refund: 01-20170862
Indiana Individual Income Tax
For Tax Year 2012

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 Supplemental Final Order Denying Refund.

HOLDING

Husband and Wife who made a payment under the Department's 2015 tax amnesty program were barred from later claiming a refund of the same liability.

ISSUE

I. Individual Income Tax - Tax Amnesty.

Authority: 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); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); IC § 6-8.1-3-17; Department of State Revenue Emergency Rule 15-240(E).

Taxpayers protest the denial of their request for refund.

STATEMENT OF FACTS

Taxpayer Husband and Wife ("Taxpayers") are residents of Indiana. On or around August 12, 2015, the Indiana Department of Revenue ("Department") received notice that the Internal Revenue Service ("IRS") increased Taxpayers' 2012 Federal Adjusted Gross Income. Based on that increase, the Department, in turn, increased Taxpayers' Indiana taxable income. Taxpayers were notified of the resulting Indiana income tax liability, along with penalty and interest, in a Proposed Assessment ("AR-80") dated August 18, 2015. On August 28, 2015, the Department issued Taxpayers a letter informing them that their 2012 tax liability qualified for the Tax Amnesty 2015 ("Amnesty") program. Taxpayers opted to participate in Amnesty and paid the base tax liability on October 5, 2015.

On April 13, 2016, Taxpayers filed an amended 2012 Indiana income tax return ("IT-40X") to account for some business expenses not claimed on the original return and to remove interest received from a U.S. Government bond from their adjusted gross income. Taxpayers claimed a refund on this amended return. The Department denied this refund in a letter dated October 7, 2016. Taxpayers filed a timely protest and an administrative hearing was scheduled. Taxpayers and their representative failed to attend the administrative hearing but requested a rehearing. The rehearing was granted and this Supplemental Order Denying Refund results. Additional facts will be provided as necessary.

I. Individual Income Tax - Tax Amnesty.

DISCUSSION

Taxpayers' 2012 Federal Adjusted Gross Income was increased by the IRS. This increase resulted in an increase in Taxpayers' 2012 Indiana income tax and created a tax liability. Taxpayers paid the base tax liability under Amnesty. Taxpayers later filed a 2012 IT-40X claiming a refund of tax. The Department denied this refund as, under the terms of Amnesty, Taxpayers gave up their right to file a claim for refund.

As with any assessment of additional tax, Taxpayers bear the burden of establishing that the Department's assessments are 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). Thus, a taxpayer is required to provide documentation explaining and supporting his 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); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Effective July 1, 2015, the Indiana General Assembly enacted a special provision, 2015 Ind. Acts 2959, P.L. 213-2015 § 91 (codified at IC § 6-8.1-3-17(c)), requiring that the Department establish and implement Amnesty. The Department promulgated Emergency Rule 15-240(E) (effective July 27, 2015), 20150729 Ind. Reg. 045150240ERA. Emergency Rule 15-240(E) specifically addresses issues concerning Amnesty which began "September 15, 2015, through 8 p.m. on November 16, 2015." Emergency Rule 15-240(E) § 1(c), 20150729 Ind. Reg. 045150240ERA at 1. Section 1(b) explains that, "Amnesty eligible liability' means an unpaid tax liability for a listed tax that was due and payable for a period ending before January 1, 2013." *Id.*

According to Emergency Rule 15-240(E) § 11(e), "[t]o participate successfully in the amnesty program, the taxpayer must: (1) pay in full all amnesty eligible liabilities; (2) relinquish all rights to protest, appeal, or litigate a tax liability that is being paid; [and] (3) **agree not to file a claim for refund of any tax paid under the amnesty program . . .**" (**emphasis added**). The Amnesty letter which Taxpayers received reiterates these terms stating, "[i]f you elect to take advantage of this program, you shall forego all rights to protest the assessment and are not allowed to file a later claim for refund."

Taxpayers took advantage of Amnesty, made a payment of base tax, and in return the Department waived all related interest and penalties. The Department also agreed to waive any collection fees, release tax liens and abstain from seeking civil or criminal prosecution. Taxpayers' Amnesty Letter was dated August 28, 2015. Amnesty did not end until November 16, 2015. Therefore, Taxpayers had almost three months to determine whether or not to participate in Amnesty. Further, Taxpayers were put on notice that the liability had been assessed in an AR-80 dated August 18, 2015. The AR-80 gave Taxpayers sixty days, or until October 19, 2015, to either pay the liability or protest the assessment. Instead, Taxpayers chose to pay the liability, via Amnesty on October 5, 2015. Under the terms of Amnesty and Emergency Rule 15-240(E) § 11(e), Taxpayers cannot later claim a refund of the tax paid; therefore Taxpayers' protest is denied.

FINDING

Taxpayers' protest is respectfully denied.

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