DEPARTMENT OF STATE REVENUE

01-20160627.LOF

Letter of Findings Number: 01-20160627
Individual Income Tax
For Tax Years 2005-07

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 did not establish that their gambling activities qualified as professional gambling. The Department is not required to impose Indiana income tax based on federal settlement amounts. Indiana individual income tax was therefore properly assessed.

ISSUE

I. Individual Income Tax–Federal Adjustments.

Authority: IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-4-6; IC § 6-8.1-5-1; IC § 6-8.1-5-2; *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); *Federal National Mortgage Association v. United States*, 469 F.3d 968 (Fed. Cir. 2006); 45 IAC 3.1-1-1; 45 IAC 3.1-1-4; IRC 63; IRC 165; www.irs.gov/irm/part8/irm_08-006-004#idm140204277743600(last visited November 21, 2017); www.irs.gov/irm/part4/irm_04-075-015#idm140023963600048 (last visited November 21, 2017); www.irs.gov/irm/part8/irm_08-017-002#idm140392938404864 (last visited November 21, 2017).

Taxpayers protest the imposition of Indiana individual income tax.

STATEMENT OF FACTS

Taxpayers are a married couple who reside outside of Indiana. In the course of an investigation of Taxpayers' 2009, 2010, 2011, 2012, 2013, and 2014 Indiana income tax filings, the Indiana Department of Revenue ("Department") found that Taxpayers had not reported to Indiana that they had been subject to a federal income tax audit for the tax years 2005, 2006, and 2007 ("Tax Years"). In the course of that federal audit, the Internal Revenue Service ("IRS") made several adjustments to Taxpayers' income, including recategorizing Taxpayers as casual gamblers rather than as professional gamblers, as Taxpayers originally filed their 2005, 2006, and 2007 federal returns and Indiana IT-40PNR returns. The Department initiated an investigation of the Tax Years and determined that Taxpayers had not reported the federal adjustments to Indiana. The Department therefore incorporated the IRS adjustments into Taxpayers' Indiana individual income tax returns for the Tax Years and recalculated Taxpayers' income for those years. The result of those recalculations was additional Indiana income to Taxpayers. The Department issued proposed assessments for Indiana individual income tax, penalties, and interest for those years. Taxpayers protested the proposed assessments and an administrative hearing was held. This Letter of Findings results. Further facts will be supplied as required.

I. Individual Income Tax–Federal Adjustments.

DISCUSSION

Taxpayers protest the imposition of Indiana individual income tax for the tax years 2005-07. As explained in an investigation report generated for the Tax Years, in the course of an investigation of Taxpayers for later years the Department found that via revenue agent reports ("RAR") the IRS determined that Taxpayers did not qualify as professional gamblers for federal purposes and had made adjustments to Taxpayers' federal income taxes for the Tax Years. The Department therefore determined that, since they did not qualify as professional gamblers for federal purposes, Taxpayers did not qualify as professional gamblers for Indiana purposes either. Taxpayers disagree with the Department's conclusion that the IRS determined that Taxpayers were not professional

gamblers and state that they filed amended returns reflecting the federal adjustments. Taxpayers therefore believe that the Department is barred from making adjustments to the Tax Years by the statute of limitations. These arguments will be addressed below.

As a threshold issue, it is the 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.

The first point of protest is that Taxpayers believe that the Department is barred by the statute of limitations from issuing proposed assessments for the tax years 2005, 2006, and 2007. Specifically, Taxpayers state that the Department was required to only make adjustments equal to the final adjustments made by the IRS regarding Taxpayers' federal taxable income. The Department made adjustments based on the IRS' initial determinations that Taxpayers were properly classified as casual gamblers.

There are several Indiana statutes and regulations which are relevant to this situation. First, IC § 6-3-2-1(a) states:

> Each taxable year, a tax at the rate of three and four-tenths percent (3.4 [percent]) 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 § 6-3-1-3.5 defines adjusted gross income in relevant part as:

> When used in this article, the term "adjusted gross income" shall mean the following:
> *(a) In the case of all individuals, "adjusted gross income" (as defined in Section 62 of the Internal Revenue Code)*, modified as follows:
> . . . .
> (*Emphasis added*).

45 IAC 3.1-1-1 further describes adjusted gross income:

> Adjusted Gross Income for Individuals Defined. For individuals, "Adjusted Gross Income" is "Adjusted Gross Income" as defined in Internal Revenue Code § 62 modified as follows:
> (1) Begin with gross income as defined in section 61 of the Internal Revenue Code.
> (2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.
> (3) Make all modifications required by IC 6-3-1-3.5(a).

45 IAC 3.1-1-4 provides:

> Deductions under Internal Revenue Code Subchapter B, Parts VI and VII which are allowable in determining Federal taxable income (itemized deductions) are not allowable deductions in determining Indiana Adjusted Gross Income.

IC § 6-3-4-6 provides:

> (a) Any taxpayer, upon request by the department, shall furnish to the department a true and correct copy of any tax return which the taxpayer has filed with the United States Internal Revenue Service which copy shall be certified to by the taxpayer under penalties of perjury.
> *(b) Each taxpayer shall notify the department of any modification as provided in subsection (c) of:*
> *(1) a federal income tax return filed by the taxpayer after January 1, 1978; or*
> *(2) the taxpayer's federal income tax liability for a taxable year which begins after December 31, 1977.*
> *The taxpayer shall file the notice on the form prescribed by the department within one hundred twenty (120) days after the modification is made if the modification was made before January 1, 2011, and one hundred*

eighty (180) days after the modification is made if the modification is made after December 31, 2010.
(c) For purposes of subsection (b), a modification occurs on the date on which a:
(1) taxpayer files an amended federal income tax return;
(2) final determination is made concerning an assessment of deficiency;
(3) final determination is made concerning a claim for a refund;
(4) taxpayer waives the restrictions on assessment and collection of all, or any part, of an underpayment of federal income tax by signing a federal Form 870, or any other Form prescribed by the Internal Revenue Service for that purpose. For purposes of this subdivision:
(A) a final determination does not occur with respect to any part of the underpayment that is not covered by the waiver; and
(B) if the signature of an authorized representative of the Internal Revenue Service is required to execute a waiver, the date of the final determination is the date of signing by the authorized representative of the Internal Revenue Service;
(5) taxpayer enters into a closing agreement with the Internal Revenue Service concerning the taxpayer's tax liability under Section 7121 of the Internal Revenue Code that is a final determination. The date the taxpayer enters into a closing agreement under this subdivision is the date the closing agreement is signed by an authorized representative of the Internal Revenue Service; or
(6) modification or alteration in an amount of tax is otherwise made that is a final determination;
for a taxable year, regardless of whether a modification results in an underpayment or overpayment of tax.
(d) For purposes of subsection (c)(2) through (c)(6), a final determination means an action or decision by a taxpayer, the Internal Revenue Service (including the Appeals Division), the United States Tax Court, or any other United States federal court concerning any disputed tax issue that:
(1) is final and conclusive; and
(2) cannot be reopened or appealed by a taxpayer or the Internal Revenue Service as a matter of law.
(e) If the federal modification results in a change in the taxpayer's federal or Indiana adjusted gross income, the taxpayer shall file an Indiana amended return within one hundred twenty (120) days after the modification is made if the modification was made before January 1, 2011, and one hundred eighty (180) days after the modification is made if the modification is made after December 31, 2010.
(*Emphasis added*).

IC § 6-8.1-5-2(i) states:

If a taxpayer's federal taxable income, federal adjusted gross income, or federal income tax liability for a taxable year is modified due to a modification as provided under IC 6-3-4-6(c) and IC 6-3-4-6(d) (for the adjusted gross income tax), or a modification or alteration as provided under IC 6-5.5-6-6(c) and IC 6-5.5-6-6(e) (for the financial institutions tax), then the date by which the department must issue a proposed assessment under section 1 of this chapter for tax imposed under IC 6-3 is extended to six (6) months after the date on which the notice of modification is filed with the department by the taxpayer.

Since IC § 6-3-1-3.5 and 45 IAC 3.1-1-1 refer to the Internal Revenue Code ("IRC") the Department also refers to IRC § 62, which provides in relevant part:

(a) For purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions:
(1) Trade and business deductions
The deductions allowed by this chapter (other than by part VII of this subchapter) which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.
. . . .

IRC § 63 provides in relevant part:

. . .
(d) Itemized deductions. For purposes of this subtitle, the term "itemized deductions" means the deductions allowable under this chapter other than–
(1) the deductions allowable in arriving at adjusted gross income, and
(2) the deduction for personal exemptions provided by section 151.
(e) Election to itemize
(1) In general
Unless an individual makes an election under this subsection for the taxable year, no itemized deduction shall be allowed for the taxable year. For purposes of this subtitle, the determination of whether a

deduction is allowable under this chapter shall be made without regard to the preceding sentence.
(2) Time and manner of election
Any election under this subsection shall be made on the taxpayer's return, and the Secretary shall prescribe the manner of signifying such election on the return.
(3) Change of election Under regulations prescribed by the Secretary, a change of election with respect to itemized deductions for any taxable year may be made after the filing of the return for such year. If the spouse of the taxpayer filed a separate return for any taxable year corresponding to the taxable year of the taxpayer, the change shall not be allowed unless, in accordance with such regulations–
(A) the spouse makes a change of election with respect to itemized deductions, for the taxable year covered in such separate return, consistent with the change of treatment sought by the taxpayer, and
(B) the taxpayer and his spouse consent in writing to the assessment (within such period as may be agreed on with the Secretary) of any deficiency, to the extent attributable to such change of election, even though at the time of the filing of such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law.
This paragraph shall not apply if the tax liability of the taxpayer's spouse for the taxable year corresponding to the taxable year of the taxpayer has been compromised under section 7122.
. . . .

Also, IRC § 165(d) states:

Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.

The Department's investigation came to the conclusion that, since the IRS determined that Taxpayers were casual gamblers, Taxpayers were only able to make itemized deductions pursuant to IRC § 63(d)-(e). Also, under 45 IAC 3.1-1-4 itemized deductions are not allowable in determining Indiana adjusted gross income. The Department therefore adjusted Taxpayers' Indiana income to reflect the federal adjustments made in the two RARs.

Taxpayers protest that they supplied sufficient documentation to the Department to establish that the IRS had in fact reconsidered its position and had reclassified them as professional gamblers but that the Department did not give any credence to those documents. Specifically, Taxpayers state that they provided federal forms 870-AD, 5278, and 4549B which they believe establish IRS support for their position. After review of these documents, the Department does not agree with Taxpayers.

The 870-AD is discussed in *Federal National Mortgage Association v. United States*, 469 F.3d 968 (Fed. Cir. 2006):

To the extent that the taxpayer suggests that Form 872-A was designed to provide clear notice, and that the second paragraph should only apply where the termination is clear, we agree. In this respect the issue is whether, under the second paragraph of Form 872-A, there has been an "assessment date of an increase in ... tax or the overassessment date of a decrease in ... tax that reflects the final determination of tax and the final administrative appeals consideration." **That requires us to consider the Form 870-AD settlement agreement executed by the parties on December 14, 1990. The settlement was the result of an IRS audit of FNMA's tax year 1983 and the November 1988 issuance of a revenue agent's report asserting that FNMA owed additional tax. In the Form 870-AD settlement agreement signed thereafter, FNMA consented to "the assessment and collection of the following deficiencies": $59,493,854 of tax and $66,698,615 of interest. An unconditional Form 870-AD is plainly a "final determination" within the meaning of Form 872-A.** See *Mobil Corp. v. United States*, 52 Fed.Cl. 327, 339 (2002) (holding that a Form 872-A was terminated because there was "a final determination of tax" where the parties executed an 870-AD agreement); *Lowenstein v. United States*, 27 Fed.Cl. 38, 51 (1992) (holding that an unconditional Form 870-AD agreement was "a final determination of tax" under Form 872-A).
Id at 971.
(**Emphasis added**).

A description of Form 870-AD is provided by "Internal Revenue Service Manuals, Part 8" found at www.irs.gov/irm/part8/irm_08-006-004#idm140204277743600(last visited November 21, 2017):

8.6.4.3 (10-26-2007)
Agreements Forms Secured in Appeals Cases

1. Use the general IRS agreement forms except in certain circumstances. Use the special Appeals

agreement forms when material mutual concessions are made and in situations when taxpayers request greater finality.
2. Special agreement forms include:
A. Income taxes and gift taxes– Form 870-AD.
B. Estate taxes– Form 890-AD. See IRM 8.7.4, *Appeals Estate and Gift Tax Cases*.
C. Excise and employment taxes– Form 2504-AD. See IRM 8.7.10, *Excise Tax Cases and IRA Adjustments* and IRM 8.7.16, *Appeals Employment Tax Procedures*.
D. Trust Fund Recovery Penalty– Form 2751-AD.
3. The following are special agreement forms used for TEFRA cases:
A Form 870-P (AD), *Settlement Agreement For Partnership Adjustments*.
B. Form 870-L (AD), *Settlement Agreement For Partnership Adjustments and Affected items*.
C. Form 870-PT (AD), *Settlement Agreement For Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts*.
D. Form 870-LT (AD), *Settlement Agreement For Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts, and Agreement for Affected Items*.
4. For information concerning TEFRA agreement forms, see IRM 8.19, *Appeals Pass-Through Entity Handbook*.

8.6.4.3.1 (10-26-2007)
Distinction Between General and Special Agreement Forms

The special agreement forms differ from the Form 870 type in several ways. The following table compares the two categories of forms:

Special Agreement Forms	General Agreement Forms
Pledges no reopening	No pledge
Effective upon acceptance by or on behalf of Commissioner	Effective when received
Suspension interest under IRC 6601(c) is controlled by date form becomes effective.	Suspension interest is controlled by the date received.

8.6.4.3.2 (06-19-2008)
Use of Agreement Forms 870 and 4549

1. Use the Form 870-type agreement (including Form 4549) where a mutual concession settlement is not involved or in a situation where the amount of tax involved in a mutual concession settlement is not material enough to require the finality of the Form 870-AD.
2. In joint return cases, agreement forms require the signature of both spouses (or authorized representative, if applicable), unless the deficiency is paid in full. Full payment by the taxpayer is considered an agreement to the deficiency (see Rev. Proc. 2005-18, section 4.03 2005-13 IRB 798). Follow normal deficiency procedures for the non-signing spouse when full payment is not received.
3. Form 4549, Income Tax Examination Changes, can be used in income tax cases closed on an agreed basis. This form combines adjustments to income, computation of tax, and waiver of restrictions on assessment and collection of a deficiency or acceptance of an overassessment. It may be used by technical employees, as defined in IRM 8.1.3.3(3), with registered access to the *Report Generation System (RGS)* program. Forward the original and one copy of Form 4549 to the taxpayer or taxpayer's representative requesting the original be signed and returned. The copy is for the taxpayer's records. Do not use Form 4549 for the cases listed below:
A. Joint Committee
B. Partial agreements
C. Cases requiring agreement forms with modifications or reservations
D. Personal holding company cases
E. IRC 1311 cases
F. Cases where effective date of waiver is postponed.
(*Emphasis in original*).

A description of Form 4549B is provided by "Internal Revenue Service Manuals, Part 4" found at

www.irs.gov/irm/part4/irm_04-075-015#idm140023963600048 (last visited November 21, 2017):

4.75.15.7.4 (07-18-2017)
Form 4549, Form 4549-A, Form 4549-B, Form 4549-E

1. Form 4549, Income Tax Examination Changes, is used for cases that result in:
   A. Agreed income tax changes. Normally, use the form for the initial report only, and you reasonably expect agreement.
   B. Adjustments to income or deduction items don't affect or warrant a change in tax liability or refundable credits on the return audited. In such cases, notify the taxpayer of, or secure his agreement to any adjustments, which affect subsequent year returns of the taxpayer.

Example:

An audit results in an adjustment to a net operating loss (NOL) that doesn't cause an additional tax liability, but may affect subsequent year returns. The disposal code for closing the audit would be 01 (RCCMS - 210).
2. If there are multiple issues or multiple years and some of them are agreed, encourage the taxpayer to enter into an agreement for the agreed issues or years by signing Form 4549.
3. Form 4549-A, Income Tax Examination Changes (Unagreed and Excepted Agreed), is used:
   A. To explain unagreed and excepted agreed income tax change cases.
   B. In a formal report and when unsure of the taxpayer's agreement.
   C. With Form 870, Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment.
4. Form 4549 and Form 4549-A are designed to cover three years. Regardless of the number of years audited, prepare one set of explanations. When reasons for an adjustment vary from year to year, detail them in one explanation. If auditing more than three years, show additional years of Form 4549-B, Income Tax Examination Changes.
5. When multiple year audits result in tax changes for some years, and no tax change for other years, use Form 4549 or Form 4549-A (as applicable) for all years audited. Use a separate column for each no-change year and enter "None" on lines 2, 14, and 16.
6. Correction of Erroneous Reports - If you find an error in a report already issued to a taxpayer:
   A. Prepare a corrected report and write "Corrected Report" at the top of Form 4549 or Form 4549-A.
   B. In the "Other Information" section of the corrected report, insert the comment: "This report supersedes report dated (enter applicable date)."
   C. If the adjustment is in favor of the Government, the taxpayer must sign the corrected report for an agreed closure.
   D. If the adjustment is in favor of the taxpayer, the taxpayer doesn't need to sign the corrected report.
   E. Provide the original and corrected report to the taxpayer.
   F. Place copies of both reports in the case file.
   G. If the taxpayer disagrees with the corrected report, apply unagreed case procedures.
7. Form 4549-B, Income Tax Examination Changes, is a continuation sheet for Form 4549 and Form 4549-A. Use it when you have more adjustments than there are lines on Form 4549 and Form 4549-A.
8. Form 4549-E, Income Tax Discrepancy Adjustments, is used to explain income tax changes for discrepancy adjustments. The preparation of Form 4549-E is substantially the same as the preparation of Form 4549. Refer to Exhibit 4.75.15-9 for those instructions.
9. Include a schedule with the applicable Form 4549 to show the tax computations.
10. See Exhibit 4.75.15-9 for Form 4549 or Form 4549-A preparation instructions.
(*Emphasis in original*).

Also, a description of Form 4549B is provided by "Internal Revenue Service Manuals, Part 4" found at www.irs.gov/irm/part8/irm_08-017-002#idm140392938404864 (last visited November 21, 2017):

8.17.2.7 (09-25-2013)
General Rules for Preparing Settlement Computations

1. The Internal Revenue Service Code, Regulations, Rulings, Tax Rate Tables and the tax return forms are excellent guides when applying the law in effect for tax credits, tax rates and other computations affecting tax liability. Often it is necessary to modify tax computation forms or create schedules to support tax computations. Following are general rules for computing all taxes.
   A. Compute tax at rates in effect for taxable year, period, etc.
   B. Recompute, if necessary, other taxes and credits.

2. Interest provisions - The settlement computation requires a special notation if certain interest provisions apply. When the following interest provisions apply, include a statement on Form 3610 (if prepared) or tax computation form such as Form 5278, Form 4549, etc. See below:

• Restricted Interest - When Form 2285 has been prepared and restricted interest applies, see IRM 8.17.6.4.4, *Annotating the Settlement Computation When Form 2285 Prepared*, for suggested language to use for the statement.

• IRC 6404(g) - If IRC 6404(g) applies, see IRM 8.17.6.9.7, *IRC 6404(g) in Settlement Computations*, for suggested language to use for the statement.

• If IRC 6621(c) applies, see IRM 8.17.6.6.2, *Annotating the Settlement Computation for Large Corporate Underpayment Rate*, for suggested language to use for the statement.

(*Emphasis in original*).

Therefore, under *Federal National Mortgage Association* and as described in the IRS manuals, it is clear that the forms provided by Taxpayers in the investigation and protest processes are all related to a settlement agreement between Taxpayers and the IRS. While those parties are free to reach any settlement they find acceptable at the federal level, such a settlement only represents an agreement to pay/accept less than initially assessed and does not change the IRS's initial determination to reclassify Taxpayers as casual gamblers and subsequent calculations of income subject to federal taxation. The Department further notes that the forms themselves contain only calculations and there is no text describing Taxpayers' federally-determined gambler status at all. Taxpayers have not referenced any statute, regulation, or court case which compels the Department to use a settlement amount between the IRS and Taxpayers as the basis for determining Indiana adjusted gross income tax.

As an alternate argument, Taxpayers state that they qualify as professional gamblers under the IRC. In support of this position, Taxpayers provided analysis prepared for this protest as well as analysis provided to the IRS in Taxpayers' appeal of the federal adjustments. The various sets of analysis echo each other in reference to the IRC, treasury regulations, and federal tax court cases. As stated above, the IRS evaluated these arguments and did not change its determination that Taxpayers were casual gamblers. The IRS' reasons for settling with Taxpayers are unknown to the Department, but without written confirmation that the IRS has reclassified Taxpayers' status from casual gamblers to professional gamblers, the Department cannot agree with Taxpayers' position.

Therefore, while Taxpayers have provided arguments and documentation in support of their protest of the Department's proposed assessments of proposed Indiana adjusted gross income tax, those arguments were already evaluated by the IRS and did not result in a reclassification of Taxpayers' casual gambler status by the IRS. Since Indiana adjusted gross income tax is calculated by starting with federally-determined income under IC § 6-3-1-3.5 and 45 IAC 3.1-1-1, and since the IRS is the federal authority charged with determining federal income amounts, the Department is not convinced that departure from the IRS' determination of Taxpayers' taxable federal income subject to income tax for the years 2005, 2006, and 2007 is warranted. While there was a settlement agreement between Taxpayers and the IRS to pay less federal income tax than initially determined to be due, Taxpayers have referred to no statute, regulation, or court case which would compel the Department to adhere to the terms of such a settlement in which it was not a party. Also, the federal 870-AD, 5278, and 4549B forms do not discuss Taxpayers' gambler status.

Regarding Taxpayers' protest that the Department is barred by the statute of limitations from making any changes other than those made by the IRS, the Department notes that Taxpayers were required by IC § 6-3-4-6(e) to file amended returns with the Department within 180 days of adjustments made at the federal level. As explained above, the Department only learned of the federal adjustments as a result of an investigation of later years. Under IC § 6-8.1-5-2(i), the Department is allowed 180 days after notification to issue proposed assessments of Indiana tax resulting from a federal adjustment. Since no notice of federal modifications was filed with the Department, the statute of limitations provided under IC § 6-8.1-5-2(i) never went into effect. In all, the Department is not convinced that the IRS changed its determination that Taxpayers were casual gamblers. As casual gamblers, Taxpayers were not allowed to use itemized deductions to reduce the amount of income subject to Indiana income tax, as provided by 45 IAC 3.1-1-4. Therefore, Taxpayers have not met the burden of proving the proposed assessments wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

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An html version of this document.