

**Memorandum of Decision: 01-20170256R
Indiana County Income Tax
For Tax Years 2012 and 2013**

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 Memorandum of Decision.

HOLDING

Individuals were able to establish that the out-of-state locality tax listed on their Indiana state income tax returns was based on income and was therefore eligible to be claimed as a credit against Indiana county taxes. The claimed refund was warranted.

ISSUE

I. Indiana County Income Tax—Refund.

Authority: IC § 6-3.5-1.1-6; IC § 6-3.5-8-6; IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); KRS 91.260.

Taxpayers protest the denial of a claim for refund.

STATEMENT OF FACTS

Taxpayers are a married couple living in Indiana. Taxpayers earned income from employment in Kentucky and filed amended returns for the tax years 2012 and 2013 claiming a refund of Indiana county taxes by application of a credit for locality taxes paid in Kentucky. The Indiana Department of Revenue ("Department") denied the claimed refund based on its belief that the Kentucky locality taxes did not qualify for the claimed credit. Taxpayers protested the denial of refund. An administrative hearing was held and this Memorandum of Decision results. Further facts will be supplied as needed.

I. Indiana County Income Tax—Refund.

DISCUSSION

Taxpayers protest the Department's denial of their claim for refund of Indiana county taxes. Taxpayers filed amended Indiana income tax returns claiming credit for locality taxes paid to Kentucky localities. The Department believed that the Kentucky tax was a license tax and not a tax based on income, which meant that the claimed credit did not apply. Taxpayers protest that the Kentucky tax was based on income and that it did qualify for the claimed credit.

As an initial point, the Department notes that, "[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 initial refund determination, shall be entitled to deference.

The Department refers to, IC § 6-8.1-9-1(a), which provides:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. Except as provided in subsections (f) and (g), in order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

- (1) The due date of the return.
- (2) The date of payment.

For purposes of this section, the due date for a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax is the

end of the calendar year which contains the taxable period for which the return is filed. The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund.

Next, for the years at issue, IC § 6-3.5-1.1-6(a) provided:

Except as provided in subsection (b), *if for a particular taxable year a county taxpayer is liable for an income tax imposed by a county, city, town, or other local governmental entity located outside of Indiana, that county taxpayer is entitled to a credit against his county adjusted gross income tax liability for that same taxable year.* The amount of the credit equals the amount of tax imposed by the other governmental entity on income derived from sources outside Indiana and subject to the county adjusted gross income tax. However, the credit provided by this section may not reduce a county taxpayer's county adjusted gross income tax liability to an amount less than would have been owed if the income subject to taxation by the other governmental entity had been ignored.
(*Emphasis added*).

While this section has since been recodified at IC § 6-3.5-8-6(a), for the years at issue, it was found under IC § 6-3.5-1.1-6(a).

Finally, KRS 91.260(1) (the Kentucky locality tax at issue) provides:

Each city of the first class shall raise a revenue from ad valorem taxes and from taxes based on income, licenses and franchises. The board of aldermen may each year, by ordinance, levy an ad valorem tax on all real and personal property subject to taxation for city purposes, at a rate within the limits prescribed in the Constitution, and may provide for taxation, for city purposes, on personal property based on income, licenses or franchises in lieu of an ad valorem tax thereon, but may not omit the imposition of an ad valorem tax on the taxable personal property of any steam, railroad, street railway, ferry, bridge, gas, water, heating, telephone, telegraph, electric light or electric power company, and may not levy or collect an income tax.
(*Emphasis added*).

Taxpayers provided substantial documentation regarding their income sources and filing methodology in both Kentucky and Indiana. This documentation establishes that the Kentucky locality tax authorized under KRS 91.260(1), and which Taxpayers paid, was based on income and was not a license tax as the Department originally believed. Thus, Taxpayers were eligible to claim the locality tax paid in Kentucky as a credit against their Indiana county taxes, as provided by IC § 6-3.5-1.1-6(a). This was the only reason given by the Department at its initial refund review level for denying the claimed refunds, and since Taxpayers have established that they correctly claimed the credits at issue, Taxpayers have established that they are eligible for the claimed refunds of Indiana county income tax for 2012 and 2013.

FINDING

Taxpayers' protest is sustained.

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