

**Letter of Findings: 01-20170392
Individual Indiana Income Tax
For the Years 2012 through 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual provided enough information to prove the Department's "best information available" income tax assessment incorrect. Individual was responsible for income tax for \$15,000 additional income. In addition, Individual provided sufficient evidence to abate penalty.

ISSUES

I. Individual Indiana Income Tax - Best Information Available Assessment.

Authority: IC § 6-3-2-1; IC § 6-8.1-5-1; *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 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); Black's Law Dictionary (9th ed. 2009).

Taxpayer argues that the Department's assessments of additional Indiana income tax for the years at issue were unwarranted.

II. Tax Administration - Penalty and Interest.

Authority: IC § 6-5.5-7-1; IC § 6-8.1-5-1; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of penalty and interest.

STATEMENT OF FACTS

Taxpayer is an Indiana individual who previously filed Indiana income tax returns for 2012, 2013, 2014, and 2015. The Indiana Department of Revenue ("Department") issued proposed assessments for additional income tax for those same years. The Department's records state that the assessment "reflects the tax due from a criminal investigation," "is the result of a desk examination," and is "based on the best information available."

Taxpayer disagreed with the additional assessments and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Individual Indiana Income Tax - Best Information Available Assessment.

DISCUSSION

The Department issued proposed assessments based on public information and information provided by the Indiana State Police. That information indicated Taxpayer had been charged with conducting illegal activities through an entity he owned which resulted in Taxpayer obtaining previously unreported, additional income in the amount of \$1 million. Taxpayer disagrees with the assessments arguing that the assessments are premature and unsubstantiated.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *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 or her challenge that the Department's position 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). In reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes an income tax on "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 § 6-3-2-1(a).

The Department issued the proposed assessment under the authority of IC § 6-8.1-5-1(a).

If the department reasonably believes that a person has not reported the proper amount of tax due, the department *shall* make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. (*Emphasis added*).

Taxpayer argues that the assessments were not based on the "best information available" to the Department. Taxpayer provided a plea agreement in which he was ordered to pay restitution of only \$15,000. Taxpayer argues that he had no control over the finances related to the criminally investigated entity and that he did not financially benefit from the alleged conduct. Taxpayer entered a plea agreement with the prosecuting office which resulted in him pleading guilty to four counts of Class C Felony and nine counts Class D Felony. Taxpayer's plea agreement ordered him to pay \$15,000 in restitution to victims on a pro rata basis.

Black's Law Dictionary defines restitution as:

1. A body of substantive law in which liability is based not on tort or contract but on the defendant's unjust enrichment.
2. Set of remedies associated with that body of law, in which the measure of recovery is usually based not on plaintiff's loss but defendant's gain.
3. Return of some specific thing to its rightful owner or status.
4. Compensation for loss; specially full or partial compensation paid by criminal to victim.
1428 (9th ed. 2009).

By Black's definition of restitution, specifically, "Set of remedies associated with that body of law, in which the measure of recovery is usually based not on plaintiff's loss but defendant's gain," restitution can be viewed as income for tax purposes. Therefore the restitution reflects the additional income Taxpayer received through the "illegal conduct." Taxpayer was unjustly enriched by \$15,000 and therefore that enrichment was properly viewed as income for Indiana income tax purposes.

IC § 6-8.1-5-1(a) imposes upon the Department the responsibility of assessing taxes based on the best information available to it. Based on information originally supplied the Department by the Indiana State Police, Taxpayer did receive additional income subject to Indiana income tax. However, the amount originally reported to the Department is incorrect. Pursuant to Taxpayer's plea agreement, he only received \$15,000 of additional income and therefore, will only be assessed income tax on the \$15,000.

FINDING

Taxpayer's protest of no additional tax due is denied. However, Taxpayer provided sufficient evidence to show that he only owed tax on \$15,000 of additional income.

II. Tax Administration - Penalty and Interest.

DISCUSSION

Taxpayer protests the imposition of penalty and interest. The penalty was assessed under IC § 6-5.5-7-1(b) stating that, "The penalty for an underpayment of tax on a quarterly return shall only be assessed on the difference between the actual amount paid by the taxpayer on the quarterly return and the lesser of: (1) twenty percent (20[percent]) of the taxpayer's final tax liability for the taxable year or (2) twenty-five percent (25[percent])

of the taxpayer's final tax liability for the taxpayer's previous taxable year." Taxpayer was also assessed a separate 10 percent negligence penalty under IC § 6-8.1-10-2.1(a). In addition, Indiana imposes interest on overdue tax pursuant to IC § 6-8.1-10-1(a), which states:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed"

Under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment - including the penalty - is presumptively valid.

Taxpayer has shown reasonable cause in this case and the penalty is waived. However, IC § 6-8.1-10-1(e) does not allow the Department to waive the interest in this instance. As discussed in Issue I, Taxpayer owes the underlying tax and therefore continues to owe the assessed interest. However, the interest shall be recalculated to reflect the appropriate amount of tax due, as discussed in Issue I above.

FINDING

Taxpayer's protest is sustained in part and denied in part.

SUMMARY

As stated in Issue I Taxpayer is only subject to additional income tax on \$15,000. As stated in Issue II Taxpayer's protest of penalty is sustained and the interest shall be recalculated to reflect the appropriate tax due.

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