

**Letter of Findings: 01-20170497**  
**Income Tax**  
**For the Year 2016**

**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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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's 2016 Indiana tax return included a deduction that was denied by the Department. Taxpayers mistakenly thought the repeal of Indiana's inheritance tax applied to their Indiana individual income tax.

**ISSUES**

**I. Income Tax–Disallowed Deduction.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 6-4.1 *et seq.*; IC § 6-3-1-3.5; *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); *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 disallowance of a deduction on their 2016 Indiana tax return.

**II. Tax Administration–Penalty and Interest.**

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

Taxpayers protest the imposition of penalty and interest.

**STATEMENT OF FACTS**

Taxpayers are a married couple that filed an Indiana IT-40PNR tax return for the year 2016 (referred to as "H" for husband and "W" for wife, as needed for convenience and clarity, hereinafter). As part of that return Taxpayers took a deduction that was disallowed by the Indiana Department of Revenue ("Department"). Taxpayers filed a protest. An administrative telephone hearing was held and this Letter of Findings results. Further facts will be supplied as required.

**I. Income Tax–Disallowed Deduction.**

**DISCUSSION**

As a threshold issue, it is Taxpayers' 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.

Taxpayers' protest letter states that the Department disallowed a deduction of "my wife's inheritance on Schedule C line 11 . . . ." Taxpayer also included a Department letter, dated May 21, 2013, stating:

Indiana's inheritance tax has been repealed for taxpayers who died after Dec. 31, 2012. On April 27, the Indiana General Assembly passed legislation repealing the tax . . . .

As the Department's letter goes on to note, the letter was "to communicate about the repeal of the inheritance tax . . . ."

In a follow-up letter to the Department, Taxpayers state that W's mother "passed away . . . [in] 2015." Taxpayers then cite to the repeal of the Indiana inheritance tax. Although Taxpayers are correct that Indiana repealed the inheritance tax, they confused the inheritance tax with Indiana's income tax.

The Indiana inheritance tax laws are at IC § 6-4.1 *et seq.* Regarding the repeal of the Indiana inheritance tax, the Department's website states:

#### **Inheritance Tax Information**

The transfer of a deceased individual's ownership interests in property, including real estate and personal property, may result in the imposition of inheritance tax. The amount of tax is determined by the value of those ownership interests that are transferred and the transferee's relationship to the deceased individual - Class A, B or C. If the amount transferred to any one transferee exceeds their exemption amount, inheritance tax is due and an inheritance tax return will need to be filed.

The Indiana Department of Revenue works with individuals, tax professionals, assessors, attorneys, and financial institutions to understand what tax forms need to be prepared and filed and whether any inheritance tax is due.

#### **Repeal of Inheritance Tax**

Indiana's inheritance tax was repealed **for individuals dying after Dec. 31, 2012**. No inheritance tax returns (Form IH-6 for Indiana residents and Form IH-12 for nonresidents) have to be prepared or filed. No tax has to be paid. In addition, no Consents to Transfer (Form IH-14) personal property or Notice of Intended Transfer of Checking Account (Form IH-19) are required for those dying after Dec. 31, 2012.

Indiana Department of Revenue: Inheritance Tax Information, <https://www.in.gov/dor/3807.htm> (last visited on October 30, 2017).

As can be seen, the inheritance tax was a tax on "the transfer of a deceased individual's ownership interests in property, including real estate and personal property . . . ." The 2016 IT-40PNR is an Indiana *income* tax form. Indiana's adjusted gross income tax is a listed tax, found at IC § 6-8.1-1-1:

"Listed taxes" or "taxes" includes only the pari-mutuel taxes ([IC 4-31-9-3](#) through [IC 4-31-9-5](#)); the riverboat admissions tax ([IC 4-33-12](#)); the riverboat wagering tax ([IC 4-33-13](#)); the slot machine wagering tax ([IC 4-35-8](#)); the type II gambling game excise tax ([IC 4-36-9](#)); the gross income tax ([IC 6-2.1](#)) (repealed); the utility receipts and utility services use taxes ([IC 6-2.3](#)); the state gross retail and use taxes ([IC 6-2.5](#)); **the adjusted gross income tax ([IC 6-3](#))**; the supplemental net income tax ([IC 6-3-8](#)) (repealed); the county adjusted gross income tax ([IC 6-3.5-1.1](#)) (repealed); the county option income tax ([IC 6-3.5-6](#)) (repealed); the county economic development income tax ([IC 6-3.5-7](#)) (repealed); the local income tax ([IC 6-3.6](#)); the auto rental excise tax ([IC 6-6-9](#)); the financial institutions tax ([IC 6-5.5](#)); the gasoline tax ([IC 6-6-1.1](#)); the special fuel tax ([IC 6-6-2.5](#)); the motor carrier fuel tax ([IC 6-6-4.1](#)); a motor fuel tax collected under a reciprocal agreement under [IC 6-8.1-3](#); the vehicle excise tax ([IC 6-6-5](#)); the aviation fuel excise tax ([IC 6-6-13](#)); the commercial vehicle excise tax ([IC 6-6-5.5](#)); the excise tax imposed on recreational vehicles and truck campers ([IC 6-6-5.1](#)); the hazardous waste disposal tax ([IC 6-6-6.6](#)) (repealed); the cigarette tax ([IC 6-7-1](#)); the beer excise tax ([IC 7.1-4-2](#)); the liquor excise tax ([IC 7.1-4-3](#)); the wine excise tax ([IC 7.1-4-4](#)); the hard cider excise tax ([IC 7.1-4-4.5](#)); the malt excise tax ([IC 7.1-4-5](#)); the petroleum severance tax ([IC 6-8-1](#)); the various innkeeper's taxes ([IC 6-9](#)); the various food and beverage taxes ([IC 6-9](#)); the county admissions tax ([IC 6-9-13](#) and [IC 6-9-28](#)); the oil inspection fee ([IC 16-44-2](#)); the penalties assessed for oversize vehicles ([IC 9-20-3](#) and [IC 9-20-18](#)); the fees and penalties assessed for overweight vehicles ([IC 9-20-4](#) and [IC 9-20-18](#)); and any other tax or fee that the department is required to collect or administer. (**Emphasis added**).

As can be seen, IC § 6-3 is the title and article that covers the Indiana adjusted income tax. Indiana's adjusted gross income tax uses Section 62 of the Internal Revenue Code (with modifications, as applicable) to define adjusted gross income. IC § 6-3-1-3.5. The adjusted gross income tax is authorized under a separate—and different—statute(s) from the repealed Indiana inheritance tax statute. Taxpayers are directed to review Indiana's

2016 IT-40PNR booklet (State Form SP 258), and the applicable statutes in IC § 6-3 *et seq.*, regarding their Indiana income tax responsibilities for 2016. A deduction for an "inheritance" (*viz.*, an annuity, per Taxpayers' protest letter) is not available for Indiana *income* taxes. While Taxpayers are correct that Indiana's inheritance tax was repealed, Taxpayers are incorrect in their assumption that this impacted Indiana's adjusted gross income tax. Indiana's inheritance tax and adjusted gross income tax are not connected, thus Taxpayers attempt to use the repeal of inheritance tax towards adjusted gross income tax is misplaced.

### FINDING

Taxpayers' protest is denied.

## II. Tax Administration—Penalty and Interest.

### DISCUSSION

Taxpayers were also assessed a negligence penalty and interest. Regarding the latter, interest cannot be waived pursuant to IC § 6-8.1-10-1(e). The Department notes that penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides in relevant part:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. 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 this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

As was noted in the analysis in **Part I**, *supra*, Taxpayers mistakenly believed that the repeal of the inheritance tax law applied to their Indiana income tax. Taxpayers did not develop any argument regarding the penalty portion of their assessment.

### FINDING

Taxpayers' protest of the imposition of penalty and interest is denied.

### SUMMARY

Taxpayers' protest regarding the imposition of Indiana adjusted gross income tax is denied. Taxpayers' protest regarding the imposition of penalty and interest is denied.

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