

**Letter of Findings: 01-20170788
Individual Income Tax
For the Years 2011 and 2012**

NOTICE: IC § 6-8.1-3-5 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department denied Individuals' protest challenging an assessment of additional individual income tax; the assessment was based on information provided by the federal authorities and one Individual's plea of guilty to participating in a scheme to defraud the federal government of income tax refunds; the Department did not err in relying on the information it obtained.

ISSUE

I. Individual Income Tax - Best Information Available Assessment.

Authority: IC § 6-3-2-1(a); IC § 6-3-4-11; IC § 6-8.1-5-1(b); IC § 6-8.1-5-1(c); *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).

Taxpayers argue that the Department overstated the amount of income earned from participation in a conspiracy to defraud the federal government of income tax refunds.

STATEMENT OF FACTS

Taxpayers are a married couple who were assessed additional Indiana income tax. Because the assessment was made based upon the husband's purported participation in a scheme to defraud the federal government of falsified tax refunds and claim fraudulent renewable fuel credits. For simplicity's sake, this Letter of Findings will refer to the married couple as "Taxpayer."

The Indiana Department of Revenue ("Department") assessed Taxpayer additional 2011 and 2012 income tax based upon information that Taxpayer had been charged with and pled guilty to a charge of participating in a scheme to defraud the United States government and to defraud vendors to whom fuel had been sold.

Taxpayer pled guilty to participating in a multi-state conspiracy to swindle the federal government and U.S. taxpayers by fraudulently claiming the benefit of alternative fuel credits and obtaining income tax refunds attributable to those credits.

Information available publicly from the U.S. Justice Department indicates that Taxpayer's conspiracy "generated over \$60 million in fraudulent tax credits"

In the agreement, Taxpayer pled guilty to one count of "Wire Fraud" and two counts of "Conspiracy to Defraud the United States."

Under the terms of the plea agreement, Taxpayer acknowledged that he was required to pay "full restitution" to the victims of his fraud. Taxpayer agreed to pay restitution of more than \$16,000,000 "to be paid joint and several with [his] co-conspirators" Pursuant to the agreement, Taxpayer was sentenced to federal prison for fifty-seven months.

Taxpayer disagreed with the assessment of Indiana income tax 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 Income Tax - Best Information Available Assessment.

DISCUSSION

Taxpayer argues that he did not receive any of the money obtained as a result of the conspiracy and that all of the fraudulent tax refunds were received by the energy company of which he was president and part owner. In addition, Taxpayer argues that he was not ordered to pay restitution because he received fraudulently obtained refunds, but that the refunds were obtained by and only benefited his energy company. Moreover, Taxpayer states that the refund amounts "were fully recorded and accounted for . . . in [company's] books and records and tax filings." In sum, Taxpayer maintains that the \$16,000,000 restitution order was more in the nature of a federal "penalty" and not an order to return personally, ill-gotten gains.

As with any assessment of additional tax, Taxpayer bears the burden of establishing that the Department's assessment was 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).

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 assessments under the authority of IC § 6-8.1-5-1(b).

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 asserts that he did not personally benefit from his participation in the tax and fraudulent energy credits scheme and that his co-conspirators should be required to pay any additional Indiana income tax. Taxpayer states that the only benefit he derived from participating in the scheme was a regular paycheck, that he filed Indiana income tax returns reporting this income, and that he paid tax on any money received as his regular salary.

To that end, Taxpayer has provided a detailed accounting of the fraudulent tax refunds purporting to establish that the refunds flowed untouched into and through his energy company and into and through the company's bank accounts. Taxpayer provided information from the energy company's "books and records," Quick Book accounts, cancelled checks, and bank statements. Taxpayer's explanation is indeed detailed and - on its face - appears to bolster Taxpayer's argument that he never obtained any personal benefit from the refunds. However, the Department notes that Taxpayer's energy company is organized as a partnership, that this partnership - of course - paid no income tax on the fraudulent refunds and tax credits benefits, but that the energy company's income "flowed through" to the benefit of Taxpayer and the other partners and co-conspirators. See IC § 6-3-4-11.

In addition, it should be pointed out that Taxpayer pled guilty to charges of "execut[ing] a scheme to defraud, and to obtain money by means of false and fraudulent pretenses" and that Taxpayer - as co-owner and president of the energy company - "made numerous efforts to hide the true use of [his company's] fuel including altering documents and lying to third party purchasers." In order to garner the fuel credits, Taxpayer created "a series of false invoices and contracts" in order to document sales of fuel from one company to another none of which ever took place. The plea agreement noted that Taxpayer's conduct resulted in a loss of more than \$52,000,000 and a federal tax loss of more than \$8,000,000.

Weighing carefully the documents available from the federal authorities, the federal "Information," and the "Presentence Investigation Report" (plea agreement), and Taxpayer's own explanation, the Department is unable to agree that Taxpayer has met his statutory burden under IC § 6-8.1-5-1(c) of establishing that he did not benefit from the criminal conspiracy, that he should not be responsible for payment of the Indiana tax, or that the Department erred in making the assessments it did.

Taxpayer makes a related but secondary argument that his spouse - with whom he filed joint Indiana income tax returns - is not responsible for any portion of the additional income tax assessment. Taxpayer claims that his wife was an "Innocent Spouse" because Taxpayer's wife "was unaware and had no access or use of the [unreported] income . . ." and because Taxpayer's wife "had no knowledge of or involvement in the activities of [energy

company]."

The Department has no basis upon which to unilaterally conclude here that Taxpayer's wife has no responsibility for any portion of the pending, additional income tax assessment. Any relief in that respect is to be found elsewhere. Taxpayer's wife is entitled to prepare and submit form IN-40SP ("Indiana Innocent Spouse Allocation Worksheet") in order to seek relief from any portion of the assessment.

FINDING

Taxpayer's protest is denied. Nevertheless, Taxpayer's wife is entitled to file an "Indiana Innocent Spouse Allocation Worksheet" in order to establish she is not responsible for any portion of the additional income tax assessment.

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