

DEPARTMENT OF STATE REVENUE

01-20170355.LOF

**Letter of Findings Number: 01-20170355
Individual Income Tax
For Tax Years 2013-2015**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual did not prove that the Department's calculations of individual income tax were incorrect. Therefore, the Department's proposed assessments for individual income tax were proper.

ISSUE**I. Income Tax—Individual Income.**

Authority: IC § 6-3-2-1; IC § 6-8.1-5-1; *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).

Taxpayer protests proposed assessments for additional income tax.

STATEMENT OF FACTS

Taxpayer is shareholder in an S-corporation. As the result of an audit, the Indiana Department of Revenue ("Department") determined that S-corp was not entitled to the Indiana Research Expense Credit ("REC") for the period of the audit. The auditor reviewed "fiscal years ending 9/30/2012, 9/30/2013, 9/30/2014, and 9/30/2015," though "for 9/30/2012, the statute had expired during the course of the audit." As a result of the audit, the Department issued proposed tax assessments. Since the S-corp was operated as a pass-through entity, the Department issued proposed assessments to the shareholders of S-corp for individual income tax for the Tax Years. A protest was filed on behalf of the S-corp and the shareholders. An administrative hearing was held regarding the matter. Further facts will be supplied as required.

I. Income Tax—Individual Income.**DISCUSSION**

As a threshold issue, it is the 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.

The Audit Report states that the REC "passed through to the taxpayer from [the S-corp] has been changed" as a result of the audit; the auditor further states that the "adjustments to the 2013 and 2014 Indiana Research Expense Credit" is "being made pursuant to IC § 6-3.1-4-7" and that "[n]o adjustment is necessary to the 2015 return as the taxpayer did not claim the REC on their return."

IC § 6-3-2-1(a) provides for the imposition of individual income tax. In a separate Letter of Findings, the

Department denied S-corp's protest (See Letter of Findings 02-20170351). In that Letter of Findings the Department found that the S-corp was properly denied the REC (the S-corp was also denied regarding its specific protest of a penalty for failure to include all nonresident shareholders in a composite return). Since Taxpayer's protest in the instant case was wholly dependent on the outcome of S-corp's protest, Taxpayer's protest is also denied. Taxpayer has not met the burden of proving the proposed assessments for individual income tax incorrect, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

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