

Letter of Findings: 01-20170522
Income Tax
For the Year 2012

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 mistakenly deducted combat zone pay from their 2012 Indiana income tax return, a deduction that was not available since combat zone pay is already excluded from Indiana income tax.

ISSUE

I. Income Tax–Proposed Assessment.

Authority: IC § 6-8.1-5-1; IC § 6-3-2-4; *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); Income Tax Information Bulletin 27 (January 2014); IT-40 Booklet 2012.

Taxpayers protest the Department's proposed assessment of income tax.

STATEMENT OF FACTS

Taxpayers are a married couple that filed a joint tax return for the year 2012. Taxpayers filed their 2012 Indiana income tax return claiming a refund. The claimed refund was issued by the Indiana Department of Revenue ("Department"). The Department subsequently determined that Taxpayers were not entitled to the 2012 Indiana income tax refund, thus the Department issued a proposed assessment for Taxpayers. Taxpayers protested the Department's proposed assessment. An administrative telephone hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Income Tax–Proposed Assessment.

DISCUSSION

As a threshold issue, it is Taxpayer's 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.

In their protest letter Taxpayers state that the husband "received from the Indiana Department of Revenue" a letter stating he "was awarded in error a claim of \$5,000 for regular Military Service Deduction for active duty pay." Taxpayers further state that the husband "earned income during the year 2012 consist[ing] of [a dollar amount] in non-taxable combat zone pay and [another dollar amount] in taxable active duty pay." Taxpayers state that the error in their 2012 Indiana income tax occurred because of "three contributing factors. Those three factors were that the tax software that Taxpayers used "failed to cross reference or prompt me to manually input my adjusted military income and therefore awarded me the full deduction of \$5,000." Additionally, Taxpayers "fully expected

that [the tax software] was robust enough to address all types of military pay situations." And lastly, the Department "did not initially review the deduction versus my adjust[ed] earned income to verify my claim was correct." Taxpayers state that they "appreciate the Indiana Department of Revenue's diligence in uncovering [the] error."

At issue is combat pay that the husband received in 2012. Taxpayers deducted the combat pay on their Indiana income tax return. The Department's 2012 Indiana Income Tax booklet (IT-40 Booklet 2012), states in relevant part on page 20:

Note. Military income earned while in a **combat zone** is not taxable on your federal or state income tax returns. Since Indiana is not taxing this income, your combat zone income is not eligible for a deduction.

Example. Jim was on active duty the first month of the year. He was stationed in a combat zone the rest of the year. His military W-2 form shows regular military wage income of \$950, and \$19,000 income earned while being stationed in a combat zone. Only \$950 of his income is taxed on his federal return; likewise, Indiana will only initially tax \$950. Jim should claim a \$950 military deduction (the lesser of the income being taxed [\$950] or \$5,000).

Although it is from 2014, the Department's Income Tax Information Bulletin 27 (January 2014), 20140129 Ind. Reg. 045140013NRA, similarly states that "military income received due to service in a combat zone is not subjected to tax on an individual's federal or state income tax return. Because this income is already excluded from Indiana income tax, it is not eligible for the deduction available to members of the National Guard and reserve components of the armed forces of the United States."

For the facts at hand, Taxpayers mistakenly took the full \$5,000 deduction found at IC § 6-3-2-4(a). The husband earned less than the full deduction amount for IC § 6-3-2-4(a) purposes, thus the Department was correct in reducing the amount from \$5,000 to the amount of the deduction that Taxpayers were eligible for on their return. Taxpayers also mistakenly deducted from their Indiana income tax return the husband's combat zone pay, which was not eligible for an Indiana deduction since it was *already excluded* from Taxpayers Indiana income tax (see IT-40 Booklet 2012, cited above, regarding this issue). Thus the Department correctly denied this deduction as well.

FINDING

Taxpayers' protest is denied.

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