

**Letter of Findings: 01-20180230
Gross Retail 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 was within its authority to adjust Individual's 2016 Indiana IT-40. Individual did not provide sufficient evidence to overcome her burden to prove the Department's adjustment incorrect.

ISSUE

I. Individual Income Tax - Indiana IT-40 Adjustment.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4; IC § 6-8.1-9.5-2; IC § 6-8.1-9.5-5; *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); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the Department's assessment.

STATEMENT OF FACTS

Taxpayer is an Individual who files in Indiana and filed a 2016 Indiana Individual income tax return ("2016 return"). The Indiana Department of Revenue ("Department") adjusted Taxpayer's 2016 return. The Department determined that Taxpayer did not make an estimated payment she had claimed on the 2016 return. The Department also offset Taxpayer's 2016 return refund with an outstanding liability from Taxpayer's previous business. An administrative hearing was held, in which Taxpayer's representative explained Taxpayer's protest. This Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - Indiana IT-40 Adjustment.

DISCUSSION

As a threshold issue, it is the 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 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). Further, when an agency is charged with enforcing a statute, the courts defer to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, interpretations of Indiana tax law contained within this decision, as well as the preceding audit, are entitled to deference. A taxpayer is required to provide documentation explaining and supporting its challenge that the Department's denial 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).

If the Department reasonably believes that a taxpayer has not reported the proper amount of tax due, the Department shall propose an assessment of unpaid tax based on the best information available to the Department. IC § 6-8.1-5-1(b). The amount of the proposed assessment "is considered a tax payment not made by the due date" and is subject to penalties and interest. *Id.* Notice of the proposed assessment shall be sent to

the taxpayer stating that it has sixty (60) days in which to pay the assessment or file a written protest. IC § 6-8.1-5-1(b) and (d). If the taxpayer does not pay the proposed assessment or file a written protest in the sixty (60) day period "[t]he department shall demand payment, as provided in [IC 6-8.1-8-2\(a\)](#), of any part of the proposed tax assessment, interest, and penalties" IC § 6-8.1-5-1(j). In these situations, the Department "shall make the demand for payment in the manner provided in [IC 6-8.1-8-2](#)." IC § 6-8.1-5-1(k). In addition IC § 6-8.1-9.5-2 allows the Department to offset a taxpayer's refund to resolve an outstanding liability.

IC § 6-8.1-8-2 provides that the Department must issue a demand notice for payment which grants the taxpayer a twenty (20) day period of time in which to "either pay the amount demanded or show reasonable cause for not paying the amount demanded." IC § 6-8.1-8-2(a). If a taxpayer "does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the twenty (20) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs," and other fees. IC § 6-8.1-8-2(b). When it has issued a tax warrant, the Department may contract with a collection agency to collect delinquent tax plus interest, penalties, collection fees, and other fees and costs. IC § 6-8.1-8-4(a). Additionally, "a collection fee of ten percent (10 percent) of the unpaid tax is added to the total amount due." *Id.* When a tax warrant is filed, "the total amount of the tax warrant becomes a judgment against the person owing the tax." IC § 6-8.1-8-2(e).

In this case, Taxpayer timely filed her 2016 return. On that return Taxpayer claimed \$9,884 in tax credits. Taxpayer claimed these credits were withholdings from her 1099R (\$2,000), estimated payments (totaling \$5,500), and a carryforward of her refund from her 2015 IT-40 (\$2,485) ("2015 carryforward"). The Department, however, reduced her credit by \$2,931.39. The Department used a portion of Taxpayer's carry forward to offset an outstanding sales tax liability from Taxpayer's business. The Department's records also only show two estimated payments totaling \$3,900.

Taxpayer protests the Department's offset and protests that the Department did not credit her 1099R withholding. First, the Department's records show that Taxpayer was given credit for her 1099R withholding for the 2016 return therefore, Taxpayer's protest of that issue is moot.

Second, the Department determined that Taxpayer previously owned a business which had an outstanding sales tax liability from 2012. The Department's records show that Taxpayer was properly notified of this outstanding liability. On November 16, 2016, the Department notified Taxpayer that her 2015 carryforward was being reduced due to the outstanding 2012 liability. No action was taken by Taxpayer to protest or contest the offset. The Department notified Taxpayer that her 2016 return was adjusted on November 8, 2017. Taxpayer timely protested that adjustment. Taxpayer claimed that she had no sales from her business from 2007-2017, and that her business actually ceased around 2007. To support her protest, Taxpayer provided ST-103s for 2007-2017 showing zero sales. These returns were filed March 6, 2018. Taxpayer also provided a BC-100 closing her business as of January 1, 2018.

While these documents are evidence that the 2012 liability may not have not been due they do not show that the Department's offset and adjustments were incorrect. Taxpayer had the opportunity to protest the 2012 sales tax assessment but did not. The Department was within its rights to collect from Taxpayer's 2015 carryforward pursuant to IC § 6-8.1-9.5-5. Taxpayer, however, may file a GA-110L on behalf of her company to request a refund of the 2012 liability, if there truly were no sales in 2012.

In this case, Taxpayer's protest regarding the 1099R withholding credit is moot, since the Department did not make an adjustment regarding it. Taxpayer's protest regarding the 2015 carryforward however is denied because she did not overcome her burden of showing that the Department's offset was incorrect, pursuant to IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

May 17, 2018

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