

**Letter of Findings: 01-20180949
Individual Income Tax
For the Year 2014 and 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual's federal income tax returns were adjusted by the IRS. Individual had 180 days from the finalizing of the IRS adjustment to file Indiana amended returns to reflect such changes. Thus, the Department's assessment was premature and Individual now has 30 days from this decision to file amended Indiana Individual income tax returns to reflect the IRS changes.

ISSUES

I. Individual Income Tax - Imposition.

Authority: IC § 6-3-4-6; IC § 6-8.1-5-1; *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); *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 imposition of Individual Income tax for tax years 2014 and 2015.

II. Tax Administration - Penalty.

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

Taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

Married Couple ("Taxpayer") are Indiana residents, filing jointly. The IRS adjusted Taxpayer's 2014 and 2015 Federal Income Tax return. The Indiana Department of Revenue ("Department") subsequently assessed Taxpayer individual income tax to reflect the federal changes for 2014 and 2015.

Taxpayer protests the assessments and requested a hearing. An administrative hearing was held in which Taxpayer explained the protest and supplied additional documentation. This Letter of Findings ensues and additional facts will be supplied if necessary.

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 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). 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).

Taxpayer protests the assessment of individual income tax for 2014 and 2015. Taxpayer stated that "the department has utilized the best information available and has created and [sic] individual income tax[] on my behalf." Taxpayer stated in the hearing that they had no opportunity to provide amended Indiana returns or

explanation. In addition, Taxpayer provided IRS form 4549 or "Income Tax Examination Changes" dated August 11, 2018. The form showed federal changes for the 2014 and 2015 tax years. Taxpayer also supplied the Department's Proposed Assessments for 2014 and 2015 dated January 26, 2018.

IC § 6-3-4-6 states that, "[t]he taxpayer shall file notice on the form prescribed by the department within one hundred twenty (120) days after the modification is made if the modification was made before January 1, 2011, and one hundred eighty (180) days after the modification is made if the modification is made after December 31, 2010." In this case, the modification was made after December 31, 2010 (in 2014). Therefore, Taxpayer had 180 days from the final IRS adjustment to file amended returns for 2014 and 2015.

Taxpayer protests the assessment of additional tax due for the stated tax years. Taxpayer bases the protest on the fact that the Department based its assessment on the "best information available" and did not allow him the opportunity to provide amended returns to reflect the federal changes. Pursuant to IC § 6-3-4-6 Taxpayer had 180 days to file amended returns. Since the IRS form was signed August 11, 2017 by Taxpayer, they had until February 7, 2018 to file amended Indiana returns. The Department therefore was premature when it issued proposed assessments on January 26, 2018. Upon the receipt of the proposed assessments Taxpayer protested the assessment rather than have the assessment proceed to collections.

Thus, since Taxpayer still had time to file amended Indiana returns to reflect the changes when the Department issued proposed assessments, Taxpayer is sustained if 2014 and 2015 amended Indiana returns are filed within 30 days of the date of this decision. Taxpayer may still be subject to any review or adjustments by the Department pursuant the appropriate statute of limitations. Furthermore, Taxpayer is still responsible for any additional tax that may be due based upon the amended returns.

FINDING

Taxpayer's protest is sustained pending the filing of 2014 and 2015 amended Indiana returns and payment of any additional tax due. If Taxpayer does not file the amended returns to reflect the federal changes then Taxpayer's protest will be denied and the originally assessed based tax will be due.

II. Tax Administration - Penalty.

Taxpayer requested that the Department abate the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

[45 IAC 15-11-2](#)(b) further states:

"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.

The Department may waive a negligence penalty when "the taxpayer affirmatively establishes that the failure . . . was due to reasonable cause and not due to negligence." [45 IAC 15-11-2\(c\)](#). 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." *Id.* The Department is mindful that "[r]easonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case." *Id.*

In this instance, Taxpayer has demonstrated that its actions were reasonable as described in [45 IAC 15-11-2\(c\)](#). Thus, Taxpayer's request for penalty abatement is sustained.

Finding

Taxpayer's protest of the negligence penalty is sustained.

SUMMARY

Taxpayer's protest is sustained pending the filing of 2014 and 2015 amended Indiana returns and payment of any additional tax due. If Taxpayer does not file the amended returns to reflect the federal changes then Taxpayer's protest will be denied and the originally assessed based tax will be due. Taxpayer's protest of the negligence penalty is sustained.

September 21, 2018

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