

DEPARTMENT OF STATE REVENUE

01-20181824R.ODR

**Order Denying Refund: 01-20181824R
Income Tax
For the Year 2017**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section is provided for the convenience of the reader and is not part of the analysis contained in this document.

HOLDING

Married couple failed to establish that distribution from a Roth IRA was a qualified distribution.

ISSUES**I. Income Tax—Roth IRA.**

Authority: IC § 6-3-2-2; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); 26 U.S.C. § 408A; IRS: 2017 Instructions for Forms 1099-R and 5498.

Taxpayers protest the Department's adjustments to their 2017 Indiana income tax return.

STATEMENT OF FACTS

Taxpayers are a married couple that filed a 2017 Indiana IT-40PNR return. The Indiana Department of Revenue ("Department"), in a letter dated August 4, 2018, notified Taxpayers that their Indiana return was being adjusted. Taxpayers filed a protest regarding the adjustments. An administrative telephone hearing was held and this ruling results. Further facts will be supplied as required.

I. Income Tax—Roth IRA.**DISCUSSION**

As a threshold issue, the Department notes that "[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.

Pursuant to IC § 6-3-2-2 Indiana defines adjusted gross income in relevant part as:

- (a) With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:
- (1) income from real or tangible personal property located in this state;
 - (2) income from doing business in this state;
 - (3) income from a trade or profession conducted in this state;
 - (4) compensation for labor or services rendered within this state; and
 - (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.

The Department's letter informing Taxpayers of the adjustments being made to their 2017 return states:

Based upon W-2's . . . Indiana is listed as the state of distribution, as such the taxpayer would be liable for the tax pertaining to that income. Our records indicate a total of \$[] of Indiana taxed 1099-R income (of the \$[] total 1099-R) but reported only \$[] to IRS and \$[] to Indiana. Since you claimed 4 months of residency, on your Schedule H, DOR is only taxing 4 months . . . of the . . . Indiana taxed pension income.

Taxpayers, in turn, argue that the Department has incorrectly "included a Roth IRA regular distribution . . . to be taxable income."

Under federal rules, a "qualified distribution from a Roth IRA shall not be included in gross income." 26 U.S.C. § 408A(d)(1). The IRS instructions also notes in relevant part that for Roth IRAs:

For distributions from a Roth IRA, report the gross distribution in box 1 but generally leave box 2a blank. Check the "Taxable amount not determined" box in box 2b. Enter Code J, Q, or T as appropriate in box 7. Do not use any other codes with Code Q or Code T.

IRS: 2017 Instructions for Forms 1099-R and 5498, p. 3. Further, the "Guide to Distribution Codes" within the instructions notes that "T—Roth IRA distribution, exception applies" and in pertinent part:

Use Code T for a distribution from a Roth IRA if you do not know if the 5-year holding period has been met but:

- The participant has reached age 59 1/2,
- The participant died, or
- The participant is disabled.

Note: *If any other code, such as 8 or P, applies, use Code J.*

The instructions are relevant for the following reason: Taxpayers provided a copy of their 2017 1099-R and in box 7 the "Distribution code" is listed as "T." In other words, this is the distribution code for a Roth IRA but the question remains whether the Wife, who is the one who received the distribution met "the 5-year holding period."

In the case at hand, although a Roth IRA distribution, Taxpayers have not established that it was a qualified distribution that would be tax exempt. As noted, the distribution code is "T" which means that it is unknown whether the 5-year holding period was met. 26 U.S.C. § 408A(d)(1)(B) states:

A payment or distribution from a Roth IRA shall not be treated as a qualified distribution under subparagraph (A) if such payment or distribution is made within the 5-taxable year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA (or such individual's spouse made a contribution to a Roth IRA) established for such individual.

As noted, Taxpayers did not provide any documentation to establish that they met the holding period requirements. Nor have Taxpayers established how much of the Wife's distribution was from contribution, earnings or interest. The 1099-R for her states in box 2b, "Taxable amount not determined."

FINDING

Taxpayer's protest is denied.

October 31, 2018

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