

**Letter of Findings: 01-20181716
Individual Income Tax
For the Year 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Indiana Individual met his burden of establishing that the Department erred in decreasing the number of dependents claimed on his 2015 Indiana income tax return and erred in assessing additional Indiana income tax. Individual established the Department's adjustments were based on a fraudulent federal return and that his actual federal return correctly reflected both his federal and Indiana tax liability.

ISSUE

I. Individual Income Tax - Federal Adjustment.

Authority: IC § 6-3-1-3.5(a); IC § 6-3-2-1(a); IC § 6-3-2-2(a); IC § 6-8.1-5-1(c); I.R.C. § 62; *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Indiana Department of Revenue erred when it assessed Taxpayer additional Indiana income tax based upon an adjustment to the number of dependents claimed on his return.

STATEMENT OF FACTS

Taxpayer is an individual who - together with his wife - filed a joint 2015 Indiana income tax return. On that return, Taxpayer reported receiving approximately \$78,000 in federal adjusted gross income. The Indiana Department of Revenue ("Department") received the return and, after reviewing the return, adjusted downward the number of Taxpayer's schedule three exemptions. The Department's adjustment was based on information available from Taxpayer's federal 2015 return. The adjustment resulted in an assessment of additional Indiana individual income tax along with a penalty amount. The Department sent a notice of proposed assessment.

Taxpayer objected to the assessment and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer and his representative explained the basis for the protest. This Letter of Findings results.

I. Individual Income Tax - Federal Adjustment.

DISCUSSION

Taxpayer argues that the federal adjusted gross income reported on his original 2015 return is correct and that the number of dependents claimed on his federal and Indiana returns is correct. According to Taxpayer, the Department erred when it reduced the number of schedule three dependents claimed on his federal return. As a result, Taxpayer concludes that the resulting assessment of additional tax - approximately \$200 - is unjustified.

As a threshold issue, it is the Taxpayer's responsibility to establish that the \$200 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).

Thus, any taxpayer challenging an assessment is required to provide documentation explaining and supporting his or her challenge that the Department's position 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).

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers file their federal income tax returns as required pursuant to the Internal Revenue Code. In computing what is considered the taxpayers' Indiana income tax, IC § 6-3-1-3.5(a) refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) states that - with certain modifications specific to Indiana law - I.R.C. § 62 defines "adjusted gross income" for Indiana taxpayers.

In this case, Taxpayer explains that he and his wife were the victims of fraud. Taxpayer explains:

For tax year 2015 we were victims of the IRS Data Breach and had a bogus IRS tax return filed by an overseas data thief in our names with wrong income and only showing only one dependent and not two, in March 2016.

Taxpayer states that he only discovered the fraudulent return when he went to prepare and file his actual 2015 federal return.

In late March 2015, we went to our CPA to have our taxes prepared and e-filed as usual. Our CPA tried to electronically e-file[] it and it was rejected as showing that the return was already filed by others and to contact the IRS. The Indiana State Return did successfully e-file.

Taxpayer explains that he took steps to address the issue. Taxpayer explains that his CPA prepared and filed the federal return, that he took the return to his local IRS office, which "accepted the Federal Return and gave us a stamped copy that we had submitted it to the IRS." Copy in hand, Taxpayer states that he took the stamped copy to the Department's local district office and "explained to them that we had been victims of the IRS Data Breach . . ."

Taxpayer then filed a police "Incident/Investigation" report with his local authorities reporting the purported fraudulent tax filing. Taxpayer states that the purportedly fraudulent return was filed electronically from outside the United States.

According to Taxpayer, the IRS accepted the substitute return and that he and his wife "received [the] Federal Refund for the amount shown on our manually hand delivered / filed tax return in late 2016."

In support of his argument, Taxpayer provided a copy of his substitute federal return which documents that the number of dependents claimed on his Indiana return was correct. In addition, Taxpayer provided a copy of the police report filed with his local police Department.

In this case, the Department concludes that Taxpayer has met his statutory burden of establishing that the Department's assessment was wrong. IC § 6-8.1-5-1(c). The Department should adjust its records to comport with the substitute 2015 federal return filed and accepted by the IRS.

FINDING

Taxpayer's protest is sustained.

October 5, 2018

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