

**Letter of Findings: 01-20182212**  
**Indiana Individual Income Tax**  
**For The Tax Year 2017**

**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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 was responsible for additional income tax for 2017 because he was not eligible to claim the Indiana 529 tax credit; Individual's 529 contribution was made to an out-of-state 529 plan.

**ISSUE**

**I. Indiana Individual Income Tax - Imposition - Disallowance of the 529 Tax Credit.**

**Authority:** IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-3-12; IC § 6-8.1-5-1; *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. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *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); Income Tax Information Bulletin 98 (November 2016); *Indiana 2017 IT-40, Full-Year Resident Individual Income Tax Booklet* (2017).

Taxpayer protests the Department's assessment of individual income tax for 2017.

**STATEMENT OF FACTS**

Taxpayer is an Indiana resident who timely filed his 2017 Indiana Full-Year Resident Individual Income Tax Return, Form IT-40. On his IT-40, Taxpayer claimed a \$200 tax credit (deduction) attributable to his contribution to a 529 Education Savings Plan.

The Indiana Department of Revenue ("Department") reviewed Taxpayer's return and disallowed his claimed deduction. The Department concluded that Taxpayer was not eligible to claim this deduction because his contribution was made to an out-of-state 529 plan, a nonqualified savings plan. As a result, the Department assessed additional income tax, interest, and penalty.

Taxpayer timely protested the assessment and submitted additional supporting documents including statements from his financial services company. Taxpayer requested that the Department make the determination without an administrative hearing. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment. Additional facts will be provided as necessary.

**I. Indiana Individual Income Tax - Imposition - Disallowance of the 529 Tax Credit.**

**DISCUSSION**

The Department reviewed Taxpayer's IT-40 return and disallowed his claimed deduction which was attributable to the 529 tax credit. The Department concluded that Taxpayer was not eligible to claim this deduction because his contribution was made to an out-of-state 529 education savings plan. Taxpayer disagreed, arguing that he was entitled to that 529 credit.

The issue thus is whether Taxpayer demonstrated that he was eligible for that 529 tax credit.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of*

*State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "[E]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting their challenges that the Department's assessment 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 "on 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). To efficiently and effectively compute what is considered the resident/taxpayer's Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be his or her Indiana income tax after applying certain additions and subtractions to that starting point, with modifications thereafter.

Additionally, a taxpayer may qualify for various tax credits, which, in turn, may reduce his or her income tax liability. One of the tax credits is outlined in IC § 6-3-3-12, which in relevant part, provides:

- (j) A taxpayer is entitled to a credit against the taxpayer's adjusted gross income tax imposed by [IC 6-3-1](#) through [IC 6-3-7](#) for a taxable year equal to the least of the following:
  - (1) Twenty percent (20[percent]) of the amount of the total contributions made by the taxpayer to an account or accounts of a college choice 529 education savings plan during the taxable year.
  - (2) One thousand dollars (\$1,000).
  - (3) The amount of the taxpayer's adjusted gross income tax imposed by [IC 6-3-1](#) through [IC 6-3-7](#) for the taxable year, reduced by the sum of all credits (as determined without regard to this section) allowed by [IC 6-3-1](#) through [IC 6-3-7](#).
- (k) A taxpayer who makes a contribution to a college choice 529 education savings plan is considered to have made the contribution on the date that:
  - (1) the taxpayer's contribution is postmarked or accepted by a delivery service, for contributions that are submitted to a college choice 529 education savings plan by mail or delivery service; or
  - (2) the taxpayer's electronic funds transfer is initiated, for contributions that are submitted to a college choice 529 education savings plan by electronic funds transfer.
- ...
- (n) To receive the credit provided by this section, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department all information that the department determines is necessary for the calculation of the credit provided by this section.

The Department's Income Tax Information Bulletin 98 (November 2016), 20161228 Ind. Reg. 045160563NRA, further illustrates as follows:

## INTRODUCTION

[IC 6-3-3-12](#) provides a tax credit for contributions to the Indiana CollegeChoice 529 Education Savings Plan. The credit applies to contributions made for taxable years beginning after Dec. 31, 2006.

...

## TAX CREDIT AVAILABILITY

***The tax credit is available only to taxpayers who made a contribution to an account in the Indiana CollegeChoice 529 Education Savings Plans that was postmarked or received by a delivery service by December 31 of the year for which the contribution is made.*** An electronic funds transfer initiated on or by December 31 is eligible for the credit for the year the transaction was made. The contributor does not have to be the owner of the account to be eligible to claim the credit. Contributions to accounts established through private colleges or universities are not eligible for the credit; however, funds in the Indiana CollegeChoice 529 Education Savings Plan can be used by the account beneficiary to pay qualified higher education expenses for attendance at a private college or university.

The tax credit is available to an individual filing a single return or a married couple filing a joint return. The taxpayer is entitled to a credit against the state adjusted gross income tax liability for a taxable year. The credit cannot be used to offset any county tax liability. The amount of the credit is the lesser of the following:

- 20[percent] of the amount of **all contributions the taxpayer makes to an account(s) of the Indiana CollegeChoice 529 Education Savings Plan during the taxable year**;
- the amount of the taxpayer's adjusted gross income tax liability for the taxable year reduced by the amount of credits allowed under [IC 6-3-1](#) through [IC 6-3-7](#); or
- \$1,000.

...

**(Emphasis in original)(Emphasis added).**

The *Indiana 2017 IT-40, Full-Year Resident Individual Income Tax Booklet* (2017), available at <https://www.in.gov/dor/files/sp265-2017.pdf> (last visited at November 2, 2018), further explains in part:

#### **Indiana's CollegeChoice 529 Education Savings Plan**

...

You may be eligible for a credit for **contributions made to Indiana's CollegeChoice 529 education savings plan**. While there are many 529 college savings plans available both in Indiana and nation-wide, **only contributions made to this specific CollegeChoice 529 Education Savings Plan are eligible for this credit. (Emphasis in original)(Emphasis added).**

Accordingly, based on the above-mentioned statute and the Department's publications, only when a taxpayer's contributions made to "Indiana CollegeChoice 529 education savings plan," the taxpayer is eligible for the Indiana 529 tax credit.

Throughout the protest, Taxpayer in this instance asserted that he was entitled to the tax credit because his contribution was made to a qualified 529 education savings plan. Taxpayer further offered copies of the financial statements to support his protest.

Upon review, however, Taxpayer's reliance of his supporting documentation is misplaced. Taxpayer's supporting documentation demonstrated that he made the contribution to an out-of-state 529 education savings plan. Since his contribution was made to a non-Indiana 529 education savings plan, Taxpayer's claimed tax credit was properly disallowed.

In short, given the totality of the circumstances, in the absence of other verifiable supporting documentation, Taxpayer was not eligible to claim the Indiana 529 tax credit because his contributions were made to a non-Indiana 529 education savings plan.

### **FINDING**

Taxpayer's protest is respectfully denied.

November 7, 2018.

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