

**Memorandum of Decision: 01-20182119R
Indiana Individual Income Tax
For the Year 2014**

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 of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Under Indiana and federal law, Former Indiana Resident's retirement income, received from his former Indiana employer, was not subject to Indiana's individual income tax because it was sourced to Florida, the state in which he now resided.

ISSUE

I. Indiana Individual Income Tax - Retirement Income.

Authority: [45 IAC 3.1-1-7\(2\)](#); 4 U.S.C. § 114; 4 U.S.C. § 114(l)(ii); I.R.C. § 3121(v)(2)(C).

Taxpayer argues that the Department erred in denying Taxpayer a refund of Indiana income tax in finding that retirement income received from his former Indiana employer was taxable in the state of Indiana.

STATEMENT OF FACTS

Taxpayer is a former Indiana resident, formerly worked for an Indiana employer, but has since retired and moved to Florida.

Taxpayer received income from his previous Indiana employer. The former employer reported the income as "taxable in Indiana and withheld Indiana state and local taxes." Taxpayer filed an amended 2016 Indiana income tax return seeking a refund of state and local tax.

On the amended return, Taxpayer explained that former employer income constituted "supplemental retirement pay" and that - pursuant to federal and Indiana law - was "taxable only in the state of Florida." In a letter dated August 2018, the Indiana Department of Revenue ("Department") denied the refund explaining as follows:

The Indiana Department of Revenue (DOR) reviewed your claim for a refund and must deny it because [the] [i]ncome appears to be from [a] W-2 which is taxed to non-residents.

Taxpayer disagreed with the decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Memorandum of Decision results.

I. Indiana Individual Income Tax - Retirement Income.

DISCUSSION

The issue is whether Taxpayer has established that the income received from his former Indiana employer constituted "supplemental retirement income" taxable not in Indiana but in his state of residence, Florida.

Taxpayer cites to [45 IAC 3.1-1-7\(2\)](#) as support for the position that the income is not subject to Indiana's income tax. The provision provides as follows:

Income from a pension, annuity, profit-sharing, or stock-option plan that meets the qualifications of the Internal Revenue Code is taxed by the state of legal residence. Lump sum distributions from qualified plans are taxed by the state which, at the time of the distribution, is the taxpayer's legal residence. Whether a plan meets the qualifications of the Internal Revenue Code is determined by the Internal Revenue Service.

Taxpayer also cites to 4 U.S.C. § 114 which, according to Taxpayer, mirrors Indiana's administrative provision.

(a) No State may impose an income tax on any retirement income of an individual who is not a resident or domiciliary of such State (as determined under the laws of such State).

(b) For purposes of this section--

(1) The term "retirement income" means any income from--

(A) a qualified trust under section 401(a) of the Internal Revenue Code of 1986 that is exempt under section 501(a) from taxation;

(B) a simplified employee pension as defined in section 408(k) of such Code;

(C) an annuity plan described in section 403(a) of such Code;

(D) an annuity contract described in section 403(b) of such Code;

(E) an individual retirement plan described in section 7701(a)(37) of such Code;

(F) an eligible deferred compensation plan (as defined in section 457 of such Code);

(G) a governmental plan (as defined in section 414(d) of such Code);

(H) a trust described in section 501(c)(18) of such Code; or

(I) any plan, program, or arrangement described in section 3121(v)(2)(C) of such Code (or any plan, program, or arrangement that is in writing, that provides for retirement payments in recognition of prior service to be made to a retired partner, and that is in effect immediately before retirement begins), if such income--

(i) is part of a series of substantially equal periodic payments (not less frequently than annually which may include income described in subparagraphs (A) through (H)) made for--

(I) the life or life expectancy of the recipient (or the joint lives or joint life expectancies of the recipient and the designated beneficiary of the recipient), or

(II) a period of not less than 10 years, or

(ii) is a payment received after termination of employment and under a plan, program, or arrangement (to which such employment relates) maintained solely for the purpose of providing retirement benefits for employees in excess of the limitations imposed by 1 or more of sections 401(a)(17), 401(k), 401(m), 402(g), 403(b), 408(k), or 415 of such Code or any other limitation on contributions or benefits in such Code on plans to which any of such sections apply.

The fact that payments may be adjusted from time to time pursuant to such plan, program, or arrangement to limit total disbursements under a predetermined formula, or to provide cost of living or similar adjustments, will not cause the periodic payments provided under such plan, program, or arrangement to fail the "substantially equal periodic payments" test.

Such term includes any retired or retainer pay of a member or former member of a uniform service computed under chapter 71 of title 10, United States Code.

(2) The term "income tax" has the meaning given such term by section 110(c).

(3) The term "State" includes any political subdivision of a State, the District of Columbia, and the possessions of the United States.

(4) For purposes of this section, the term "retired partner" is an individual who is described as a partner in section 7701(a)(2) of the Internal Revenue Code of 1986 and who is retired under such individual's partnership agreement.

(e) Nothing in this section shall be construed as having any effect on the application of section 514 of the Employee Retirement Income Security Act of 1974.

(Emphasis added).

Taxpayer explains that federal law "prohibits states from imposing income taxes on specified pension and other retirement income of nonresidents or nondomiciliaries received after December 31, 1995." Taxpayer further explains that "federal law safeguards nonresidents' income from a wide array qualified retirement arrangements and nonqualified deferred compensation plans from having to pay income taxes to the state where the pay-outs were earned or sourced but where they no longer reside."

Taxpayer bases its opinion, that the payments may not be taxed by the recipient's former state residence, on the specific provision found under 4 U.S.C. § 114(f)(ii) which sources certain retirement income to the state of current residency including retirement benefits which meet the requirements found at:

3121(v)(2)(C) of such Code (or any plan, program, or arrangement that is in writing, that provides for retirement payments in recognition of prior service to be made to a retired partner, and that is in effect immediately before retirement begins), if such income . . . I.R.C. § 3121(v)(2)(C).

Taxpayer explains that the payment fit within the provisions of I.R.C. § 3121(v)(2)(C) because Taxpayer's payments are:

[R]eceived after termination of employment and under a plan, program, or arrangement (to which such employment relates) **maintained solely for the purpose of providing retirement benefits for employees in excess of the limitations imposed** by 1 or more of sections 401(a)(17), 401(k), 401(m), 402(g), 403(b), 408(k), or 415 of such Code or any other limitation on contributions or benefits in such Code on plans to which any of such sections apply.

(Taxpayer's emphasis).

In conclusion, Taxpayer asks that the Department reconsider its decision as set out in the August 2018 letter.

Each link of Taxpayer's analysis rings true. The Indiana regulation precludes Indiana from taxing income which "meets the qualification of the Internal Revenue Code" [45 IAC 3.1-1-7\(2\)](#). 4 U.S.C. 114(l)(ii) precludes the Taxpayer's former state of residency from taxing income which meets the definition set out in I.R.C. § 3121(v)(2)(C). Taxpayer received the income at issue here pursuant to a retirements benefit plan which meets the requirement specified at I.R.C. § 3121(v)(2)(C) because the income was received after "termination of employment . . . under a plan, or arrangement . . . maintained solely for the purpose of providing retirements benefits . . . " as enumerated under federal law.

FINDING

Taxpayer's protest is sustained.

November 28, 2018

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