

**Letter of Findings: 01-20182197
Individual Income Tax
For the 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department properly exercised its statutory authority in issuing Indiana Individual a proposed assessment of additional tax in order to recover an erroneously issued income tax refund.

I. Indiana Individual Income Tax - Erroneous Refund.

Authority: IC § 6-8.1-5-1(c); IC § 6-8.1-5-2(g); *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).

Taxpayer claims that she is entitled to keep an income tax refund erroneously issued to her by the Indiana Department of Revenue.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who filed a 2017 Indiana individual income tax return. In filing that return, Taxpayer paid what she calculated as the amount of tax due. The Indiana Department of Revenue ("Department") reviewed the return and erroneously issued an approximately \$600 refund. After again reviewing the return, the Department detected the error and issued Taxpayer a notice of proposed assessment to recoup the \$600 refund.

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

I. Indiana Individual Income Tax - Erroneous Refund.

DISCUSSION

The issue is whether Taxpayer is required to return the erroneous \$600 or whether - as Taxpayer contends - she is not required to return the amount.

Taxpayer argues that she is entitled to keep the \$600 refund because the refund was issued in error by the Department.

As with any assessment of tax, it is the Taxpayer's responsibility to establish that the income tax assessment was 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." See also *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).

IC § 6-8.1-5-2(g) provides the Department a remedy in instances in which a refund has been mistakenly issued. The statute provides in part:

If any part of a listed tax has been erroneously refunded by the department, the erroneous refund may be recovered through the assessment procedures established in this chapter. An assessment issued for an erroneous refund must be issued:

(1) within two (2) years after making the refund; or

(2) within five (5) years after making the refund if the refund was induced by fraud or misrepresentation.

Taxpayer makes no argument that she is actually owed the refund or that the Department acted outside its statutory authority in issuing the proposed assessment.

Although the Department is required to accurately and diligently review tax returns the error was attributable to a mistaken calculation of Taxpayer's Schedule 5 credits. Whether through human or mechanical error, the original review of the return resulted in a miscalculation of the credits to which Taxpayer was entitled. In her original return, she correctly reported the credits, but the Department miscounted that amount.

Taxpayer has not met her burden of establishing that the proposed assessment was "wrong" and - as a result - Taxpayer is required to return money that does not belong to her.

FINDING

Taxpayer's protest is respectfully denied.

December 11, 2018

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