

**Letter of Findings: 01-20181700
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 failed to meet his burden of establishing that an assessment of income tax - intended to recover an erroneous refund of tax previously issued to Indiana Individual - should be abated; the Department acted on its responsibility to recover the erroneous refund and assess an appropriate amount of interest and penalty.

I. Individual Income Tax - Proposed Assessment.

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); IC § 6-8.1-5-2(g); IC § 6-8.1-10-1(a); IC § 6-8.1-10-2.1(a)(2); 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 Department erred in assessing him 2015 income tax on the ground that any error made in filing his original return and issuing him a refund was attributable to the Department.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who timely filed a 2015 Indiana income tax return. On that return, Taxpayer reported that he had received no taxable income and claimed a refund of the tax withheld on his behalf by his Indiana employer.

The Indiana Department of Revenue ("Department") processed the return and issued Taxpayer a refund of approximately \$1,200. Subsequently, the Department determined that Taxpayer's original return was erroneous and that he had received income taxable to the state of Indiana. Therefore, the Department issued Taxpayer a "proposed assessment" of additional tax, penalty, and interest.

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 the protest. This Letter of Findings results.

I. Individual Income Tax - Proposed Assessment.

DISCUSSION

The issue is whether Taxpayer is entitled to an abatement of the proposed assessment of income tax, penalty, and interest.

As a threshold issue, it is the Taxpayer's responsibility to establish that the interest, penalty, and 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*

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 a taxpayer's 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.

IC § 6-8.1-5-2(g) provides the Department authority to recover refunds which have been erroneously 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."

In addition, IC § 6-8.1-10-1(a) imposes an interest charge if a person fails to pay the correct amount of tax. That provision states:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

Finally, IC § 6-8.1-10-2.1(a)(2) imposes a ten-percent penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment."

In this particular instance, Taxpayer states that he originally reported that he had no income taxable in Indiana because he had been told by two fellow employees that - as a state of Indiana employee - his income was not subject to Indiana's income tax. In addition, Taxpayer states that the pending assessment should be abated because it was the Department's own error in accepting the original returns which eventually led to the current disputed assessment. As Taxpayer explains, "If things would have been handled and processed correctly the first time I mailed [the return] in, I would not be having this financial problem at this time."

The Department is unable to agree that Taxpayer has met his burden of establishing that the assessment was "wrong" and should now be abated. Taxpayer has presented no statutory authority for his original position that state employees are not subject to Indiana's individual income tax. Taxpayer's original misunderstanding - that state of Indiana employees are exempt from the state's income tax regime - may have triggered the original refund, but that does not necessarily mean that the state is left without remedy. In this case, IC § 6-8.1-5-2(g) plainly gives the Department authority to recoup refunds which were issued in error, IC § 6-8.1-10-1(a) imposes interest charges on unremitted taxes, and IC § 6-8.1-10-2.1(a)(2) imposes a penalty if a taxpayer has not paid tax on or before the due date of the return.

In this case, the Department did what is required to do in the face of Taxpayer's failure to do what the law plainly required. The Department must respectfully disagree with Taxpayer's assertion that the 2015 tax, penalty, and interest must now be eliminated.

FINDING

Taxpayer's protest is respectfully denied.

February 27, 2019

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