

**Letter of Findings: 01-20190192
County Income Tax
For the Year 2015**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 requires 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Married couple withdrew money from a retirement account, which they agree was subject to Indiana state income tax. Married couple protested the imposition of Indiana county tax for their county of residence. After review, the Department agrees that county tax was not due for 2015.

ISSUES

I. County Income Tax—Income Subject to Tax.

Authority: IC § 6-3.5-1.1-1; IC § 6-3.5-1.1-16; IC § 6-8.1-5-1; *Indiana Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayers protest the imposition of county income tax for the tax year 2015.

II. Tax Administration—Penalty and Interest.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the negligence penalty and interest.

STATEMENT OF FACTS

Taxpayers are a married couple residing in Indiana. After receiving information from the Internal Revenue Service ("IRS") that Taxpayers had additional income for the tax year 2015, the Indiana Department of Revenue ("Department") issued an assessment for additional Indiana income tax, county income tax, penalty, and interest reflecting the amount of previously unreported income. Taxpayers protested the imposition of county income tax and penalty. An administrative hearing was conducted via telephone and this Letter of Findings results. Further facts will be supplied as required.

I. County Income Tax—Income Subject to Tax.

DISCUSSION

Taxpayers are a married couple who moved into an Indiana residence from another state in May 2015. In December 2015, Taxpayers withdrew an amount from a retirement account in order to place a down payment on a house in Indiana. In 2016, Taxpayers received notice from the IRS that they owed federal taxes on the amount withdrawn from the retirement account. In 2018, after receiving information from the IRS that Taxpayers had additional income in 2015, the Department issued a proposed assessment for additional Indiana income tax, county income tax, penalty, and interest. Taxpayers protested the imposition of county income tax, penalty, and interest. An administrative hearing was conducted via telephone. This Letter of Findings results. Further facts will be supplied as required.

As a threshold issue, it is the taxpayer's responsibility to establish that the existing 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 [D]epartment'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 Dept. of State Revenue v. Rent-A-Center East*,

Inc., 963 N.E. 2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

The first relevant statute is IC § 6-3.5-1.1-1, which stated during 2015 when Taxpayers withdrew the money from their retirement account:

As used in this chapter:

"Adjusted gross income" has the same definition that the term is given in [IC 6-3-1-3.5\(a\)](#), except that in the case of a county taxpayer who is not a resident of a county that has imposed the county adjusted gross income tax, the term includes only adjusted gross income derived from the taxpayer's principal place of business or employment.

"Apartment complex" means real property consisting of at least five (5) units that are regularly used to rent or otherwise furnish residential accommodations for periods of at least thirty (30) days.

"Civil taxing unit" means any entity having the power to impose ad valorem property taxes except a school corporation. The term does not include a solid waste management district that is not entitled to a distribution under section 1.3 of this chapter. However, in the case of a consolidated city, the term "civil taxing unit" includes the consolidated city and all special taxing districts, all special service districts, and all entities whose budgets and property tax levies are subject to review under [IC 36-3-6-9](#).

"County council" includes the city-county council of a consolidated city.

"County taxpayer" as it relates to a county for a year means any individual:

- (1) who resides in that county on the date specified in section 16 of this chapter; or*
- (2) who maintains the taxpayer's principal place of business or employment in that county on the date specified in section 16 of this chapter and who does not on that same date reside in another county in which the county adjusted gross income tax, the county option income tax, or the county economic development income tax is in effect.*

"Department" refers to the Indiana department of state revenue.

"Homestead" has the meaning set forth in [IC 6-1.1-12-37](#).

"Nonresident county taxpayer" as it relates to a county for a year means any county taxpayer for that county for that year who is not a resident county taxpayer of that county for that year.

"Qualified residential property" refers to any of the following:

- (1) An apartment complex.*
- (2) A homestead.*
- (3) Residential rental property.*

"Resident county taxpayer" as it relates to a county for a year means any county taxpayer who resides in that county on the date specified in section 16 of this chapter.

"Residential rental property" means real property consisting of not more than four (4) units that are regularly used to rent or otherwise furnish residential accommodations for periods of at least thirty (30) days.

"School corporation" means any public school corporation established under Indiana law.

(Emphasis added).

Therefore, income withdrawn from a retirement account which is subject to federal income tax and state income tax is also subject to county income tax.

Next, IC § 6-3.5-1.1-16 stated in 2015:

(a) For purposes of this chapter, an individual shall be treated as a resident of the county in which he:

- (1) maintains a home if the individual maintains only one (1) in Indiana;*
- (2) if subdivision (1) does not apply, is registered to vote;*
- (3) if neither subdivision (1) or (2) applies, registers his personal automobile; or*
- (4) if neither subdivision (1), (2), or (3) applies, spends the majority of his time spent in Indiana during the taxable year in question.*

(b) The residence or principal place of business or employment of an individual is to be determined on January 1 of the calendar year in which the individual's taxable year commences. If an individual changes the location of his residence or principal place of employment or business to another county in Indiana during a calendar year, his liability for county adjusted gross income tax is not affected.

(c) Notwithstanding subsection (b), if an individual becomes a county taxpayer for purposes of [IC 36-7-27](#)

during a calendar year because the individual:

- (1) changes the location of the individual's residence to a county in which the individual begins employment or business at a qualified economic development tax project (as defined in [IC 36-7-27-9](#)); or
- (2) changes the location of the individual's principal place of employment or business to a qualified economic development tax project and does not reside in another county in which the county adjusted gross income tax is in effect;

the individual's adjusted gross income attributable to employment or business at the qualified economic development tax project is taxable only by the county containing the qualified economic development tax project.

In the instant case, Taxpayers did not reside in Indiana on January 1, 2015. When they moved to their Indiana residence in May of 2015, they were retired and had no place of employment or business. Since they did not have an Indiana county income tax rate on January 1, 2015, and since they did not have a principle place of employment or a business in Indiana when they did move into Indiana, Taxpayers did not have an Indiana county income tax rate to apply to their income for 2015.

Therefore, while the withdrawal of money from the retirement account did constitute taxable income subject to federal, state, and county income taxes for 2015, under IC § 6-3.5-1.1-1, Taxpayers did not have an Indiana county income tax rate for 2015 by virtue of the fact that they did not live in Indiana on January 1, 2015 and did not have a principle place of employment or business in Indiana during 2015, as provided by IC § 6-3.5-1.1-16(b). Taxpayers have met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment of county income tax wrong.

FINDING

Taxpayers' protest is sustained.

II. Tax Administration—Penalty and Interest.

DISCUSSION

Taxpayers requested that the Department abate the negligence penalty and interest included with the assessment. As provided by IC § 6-8.1-10-1(e), the Department may not waive interest. Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
 - (2) 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;
 - (3) *incurs, upon examination by the department, a deficiency that is due to negligence;*
 - (4) fails to timely remit any tax held in trust for the state; or
 - (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.
- (Emphasis added).*

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty when a taxpayer establishes that its failure to pay a tax was due to reasonable cause and not due to negligence. [45 IAC 15-11-2](#)(c). The taxpayer must demonstrate that it exercised ordinary business care in carrying out or failing to carry out a duty giving rise to the penalty. Reasonable cause is fact sensitive and will vary based on the facts of each individual case.

In this instance, Taxpayers have not demonstrated that their actions were reasonable as described in [45 IAC 15-](#)

[11-2\(c\)](#). Taxpayers filed an electronic return for 2015. The Department reviewed that return and found that Taxpayers filed an IT-40, which is a full-year resident return. That return listed the Indiana County where Taxpayers lived as their Indiana County of residence. Since it has been established in Issue I above that Taxpayers moved into Indiana during 2015, they should have filed a IT-40 PNR, which is a partial non-resident return filed by individuals who did not live in Indiana for an entire year.

As provided above, the Department may not waive interest. Regarding penalty, since Taxpayers filed a full-year resident return, it was entirely reasonable for the Department to treat Taxpayers as full year Indiana residents with an Indiana home county and as subject to Indiana county income tax. Further, Taxpayers were informed in 2016 by the IRS that additional tax was due for 2015. Taxpayers did not inform the Department of the IRS determination that they had additional income in 2015, as required by IC § 6-3-4-6. Finally, Taxpayers acknowledge that additional state income tax is due for 2015. Therefore, waiver of penalty would not be appropriate in this case. However, since the base tax will be reduced, as provided in Issue I above, penalty and interest will be recalculated to reflect that only the assessed amount of Indiana state income tax is due.

FINDING

Taxpayers' protest of the negligence penalty and interest is denied.

SUMMARY

Taxpayers are sustained on Issue I regarding the imposition of Indiana county income tax. Taxpayers are denied on Issue II regarding the imposition of penalty and interest.

March 27, 2019

Posted: 05/29/2019 by Legislative Services Agency
An [html](#) version of this document.