

DEPARTMENT OF STATE REVENUE

02-20182345.LOF

01-20182346.LOF

01-20182347.LOF

Letter of Findings: 02-20182345; 01-20182346; 01-20182347
Corporate Income Tax and Individual Income Tax
For Tax Years 2014 and 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 Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.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

Gas station/convenience store did not provide documentation to support its protest. Therefore, the Department cannot grant the protest.

ISSUE**I. Proposed Assessments - Income Tax.**

Authority: I.R.C. § 1361; I.R.C. § 1362; IC § 6-8.1-5-1; IC § 6-3-2-1; IC § 6-3-2-2.8; IC § 6-8.1-5-4; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *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); *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the assessment of additional income tax.

STATEMENT OF FACTS

Taxpayer is a gas station and convenience store incorporated as an S Corporation in Indiana. Taxpayer was subject to a corporate income tax audit, sales tax audit, and withholding tax audit for tax years 2014 and 2015. The corporate income tax audit resulted in additional corporate income and thus additional corporate income tax. According to the audit report, Taxpayer had two nonresident shareholders during the audit period. Each nonresident shareholder's share of the undistributed taxable income was taxed at the Taxpayer level as an adjustment to the Taxpayer's composite return. Taxpayer also had at least two resident shareholders. These resident shareholders were assessed additional Indiana individual income tax as a result of Taxpayer's audits and the flow through character of their ownership in Taxpayer.

Taxpayer and its resident shareholders protested the results of these audits, particularly the additional corporate and individual income tax. A hearing was held where it was determined that Taxpayer would provide additional documentation to support its argument. Taxpayer was given thirty days to provide this documentation. As of the date of this Letter of Findings, Taxpayer has not provided documentation to support its protest.

I. Proposed Assessments -Income Tax.**DISCUSSION**

As the result of several audits, the Department assessed Taxpayer additional corporate income tax and its shareholders were assessed additional individual income tax for tax years 2014 and 2015. Taxpayer protested the assessments but failed to provide supporting documentation despite being granted a thirty day extension in which to do so.

It is important to note that all tax assessments are prima facie evidence that the Department's claim for the 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). Thus, the taxpayer is required to

provide documentation explaining and supporting its challenge 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); *see also Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes an income tax on every corporation's adjusted gross income from Indiana sources. IC § 6-3-2-1(b). An S Corporation is a small business corporation, which must meet certain statutory requirements and properly elect to be exempt from income tax for income tax purposes under I.R.C. §§ 1361 and 1362. An S Corporation generally does not pay taxes on its income. IC § 6-3-2-2.8; *see also* I.R.C. § 1361 *et seq.* Rather, the S Corporation's income subsequently passes through to its shareholders; its shareholders report and pay the income tax when they file their federal or state individual income tax returns. *Id.*

Under Indiana law, "[e]very person subject to a listed tax must keep books and records so that the [D]epartment can determine the amount, if any, of the person's liability for that tax. . . ." IC § 6-8.1-5-4(a). By failing to support its argument or provide documentation, Taxpayer has failed to meet its burden under IC § 6-8.1-5-1(c) and *Wendt*. Therefore, Taxpayer is denied.

FINDING

Taxpayer's protest is respectfully denied.

July 17, 2019

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