

**Final Order Denying Refund: 01-20190633**  
**Income Tax**  
**For The Tax Year 2017**

**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 Final Order Denying Refund.

**HOLDING**

Married couple failed to provide documentation supporting their position that a passive investment loss should be deducted before and after calculating federal adjusted gross income.

**ISSUE**

**I. Income Tax-Passive Activity Loss.**

**Authority:** Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); IC § 6-3-2-1; IC § 6-3-1-3.5; IC § 6-3-2-2.

Taxpayers protest denial of a claim for refund.

**STATEMENT OF FACTS**

Taxpayers are Indiana residents. For the tax year of 2017, Taxpayers claimed Passive Activity Loss ("PAL") from an investment in an out-of-state construction company. Using form 8582 Taxpayers properly deducted the PAL from their federal Adjusted Gross Income Tax ("AGIT"). Taxpayers then claimed the same PAL on their Indiana IT-40 schedule 2 form by writing it in under deductions without a proper code. This return resulted in a claim for refund. After review, the Department of Revenue ("Department") denied the claim on the basis that Taxpayers' requested amount was already included in federal AGIT. Taxpayers protested the denial of the claim for refund. An administrative hearing was held and this Order Denying Refund results. Further facts will be supplied as required.

**I. Income Tax-Passive Activity Loss.**

**DISCUSSION**

Taxpayers protest the denial of PAL deduction for the tax year at issue. The Department denied Taxpayers because PAL had already been deducted from Taxpayers' federal AGIT for 2017. To support their claim for refund, Taxpayers sent documentation that included the federal 8582 form for PAL and the IT-40 schedule 2 which had claimed the PAL deduction written under code 999 (which is an invalid code). Taxpayers also added that they "believe the State of Indiana follows Federal passive loss rules and limitations."

The Department notes that, "[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, as well as the preceding audit, shall be entitled to deference.

Indiana imposes AGIT on all residents. IC § 6-3-2-1(a). A taxpayer's Indiana income is determined by starting with the federal AGIT and making certain adjustments. IC § 6-3-1-3.5(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 properly and correctly file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayer's Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

Taxpayers argue that Indiana follows federal rules regarding PAL. Taxpayers are correct to the extent that Indiana does not require PAL deducted at the federal level to be added back at the Indiana level. Taxpayers are incorrect that Indiana allows PAL to be deducted at both levels. Taxpayers referred to no statute, regulation, or court case which would support their position that PAL may be deducted at the state level.

**FINDING**

Taxpayers' protest is denied.

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