

**Letter of Findings: 01-20190973
Individual Income Tax
For the Tax Years 2015-2017**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individuals successfully demonstrated that the Department erred in modifying their offset credits for local taxes paid outside of Indiana.

ISSUE

I. Individual Income Tax - Local Withholding.

Authority: IC § 6-3.6-4-1; IC § 6-3.6-8-3; IC § 6-8.1-5-1; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 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); [45 IAC 3.1-4-10](#); Income Tax Information Bulletin 32 (July 2007).

Taxpayers protest the Indiana individual income tax imposed for tax years 2015-2017.

STATEMENT OF FACTS

Taxpayers are individuals who lived in Indiana and worked in a neighboring state during the tax years. For each of these years, Taxpayers jointly filed an Indiana income tax return claiming a refund. The Indiana Department of Revenue ("Department") refunded the claimed amount in each year. These returns reported withholding credits for Indiana state and county taxes, as well as credits for local taxes paid outside Indiana. The Department later reviewed these returns and found that Taxpayers over-reported the credits for Indiana county withholding and for local taxes paid outside Indiana. The Department reduced these credits and issued proposed assessments for the resulting Indiana income tax liability, plus interest. Taxpayers protested this assessment, opting for the Department to make its written decision based on the materials sent in with the protest. Therefore, no administrative hearing was held. This Letter of Findings is written based on the materials in the protest file. Further facts will be supplied as necessary.

I. Individual Income Tax - Local Withholding.

DISCUSSION

On their returns, Taxpayers claimed credits for Indiana county tax withheld on their behalf, as well as for local taxes paid outside Indiana. In reviewing Taxpayers' W-2s for each year, the Department found that one of the Taxpayers only had local tax withheld for a municipality outside of Indiana, while the other also had Indiana county tax withheld. Based on the figures from the W-2s, the Department recalculated Taxpayers' tax credits. Taxpayers agreed with the adjustments for Indiana county tax withholding credits, but protest the amount of credits allowed for local income taxes paid outside Indiana. The issue is whether Taxpayers adequately demonstrated that the Department's adjustments to offset credits for local taxes paid outside of Indiana were incorrect.

As a threshold issue, it is a 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*, 867

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. Poorly developed and non-cogent arguments are subject to waiver. *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 485 n.9 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010).

Counties in Indiana impose an adjusted gross income tax on their local county residents. IC § 6-3.6-4-1. A taxpayer is a local county resident if he resides in the county "on January 1 of the calendar year in which the individual's taxable year commences." IC § 6-3.6-8-3(b). A taxpayer may be eligible, however, for a credit to reduce their local tax liability if the taxpayer's income is subject to a local income tax in another state.

A taxpayer may receive an offset credit for local income tax paid in another state. The taxpayer's credit for these payments will be the lesser of: "(1) the amount of local income tax actually paid to the locality in the other state; (2) the amount of income taxed by the locality outside of Indiana multiplied by the Indiana county tax rate to which the taxpayer is subject; or (3) the actual amount of county income tax due." Income Tax Information Bulletin 32 (July 2007) 20070801 Ind. Reg. 045070440NRA; see [45 IAC 3.1-4-10](#). To prove eligibility for the credit, a taxpayer must provide either (1) a copy of the tax return filed with the out-of-state locality or (2) a copy of the W-2 form showing the local tax withheld. *Id.* On a joint return, each spouse must separately compute the credit, and cannot use their excess credit to reduce their spouse's liability. *Id.*

Taxpayers included with their protest copies of their W-2s for the tax years as well as revised tax returns, which recalculate tax liability with adjusted withholding credits. The W-2s show that Taxpayers each paid local income tax outside of Indiana. The Department's calculation only determined offset credits for one spouse working outside of Indiana. While the Department's calculations were flawed, it also cannot adopt the calculations provided in the Taxpayers' revised tax return. Taxpayers did not separately compute the credit for each spouse, meaning that their revised return is still erroneous.

Taxpayers sufficiently demonstrated errors in the Department's recalculation of credits to offset local taxes paid outside of Indiana. Taxpayers' own calculations were also flawed. The Department will therefore recalculate the credits in accordance with these findings, using the provided W-2s and revised tax returns. Taxpayers' protest is sustained.

FINDING

Taxpayers' protest is sustained.

October 7, 2019

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