

**Letter of Findings: 01-20190519**  
**Individual Income Tax**  
**For the Tax Years 2015, 2016, and 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual has not been convicted of embezzlement, thus the Department's assessments were premature.

### ISSUE

#### **I. Income Tax-Burden of Proof Assessment Incorrect.**

**Authority:** IC § 6-8.1-5-1; *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *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); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the imposition of individual income tax for tax years 2015, 2016, and 2017.

### STATEMENT OF FACTS

Taxpayer, an Indiana resident, was assessed additional individual income tax for tax years 2015, 2016, and 2017. Taxpayer protested the assessment and this Letter of Findings results. Additional facts will be provided as necessary.

#### **I. Income Tax-Burden of Proof Assessment Incorrect.**

### DISCUSSION

In the course of a review of publicly available information, the Indiana Department of Revenue ("Department") became aware that Taxpayer had been charged with embezzlement for tax years 2015, 2016, and 2017. The Department used this information as the basis for assessing Taxpayer with additional income tax for those years. Taxpayer protested the assessments and asked for additional information.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2011); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, the taxpayer is required to provide documentation explaining and supporting its 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 LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2011).

The Department based its assessment on public information that Taxpayer had been charged with embezzlement. To be charged with a crime is not akin to being guilty of a crime. As of the date of this Letter of Findings, Taxpayer has not been convicted of the crime of embezzlement; in fact, the trial has not even taken place. Therefore, the Department's assessments are premature and Taxpayer's protest is sustained. However, should Taxpayer be convicted of embezzlement at a later date, it is possible that the Department will assess individual income tax on those amounts at that time.

### FINDING

Taxpayer's protest is sustained.

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