

**Letter of Findings: 01-20191364**  
**Indiana Individual Income Tax**  
**For The Tax Year 2011**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individuals were responsible for additional Indiana income tax, interest, and a ten percent negligence penalty for the 2011 tax year because, after a cross-reference examination with the federal information, the information reflected that Individuals had a higher adjusted gross income.

**ISSUE**

**I. Indiana Individual Income Tax - Federal Adjustments.**

**Authority:** IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-4-4.1; IC § 6-3-4-6; IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; *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); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *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); [45 IAC 3.1-1-94](#).

Taxpayers protest the Department's assessment of individual income tax for 2011.

**STATEMENT OF FACTS**

Taxpayers (Husband and Wife) are Indiana residents who filed Indiana Full-Year Resident Individual Income Tax Return (IT-40 Form) annually. Taxpayers were audited by the Internal Revenue Service ("IRS"). In 2019, based on the IRS Revenue Agent Report (RAR adjustments), the Indiana Department of Revenue ("Department") determined that, for the 2011 tax year, Taxpayers had an additional \$33,920 in federal adjusted gross income than what was originally reported on their 2011 return, IT-40 Form. The Department concluded that Taxpayers owed additional Indiana and county income tax and, as a result, assessed Taxpayers additional income tax, a ten percent negligence penalty, and interest (Liability Number 2011-04110380), in the total amount of \$1,976.98. In addition, the Department imposed an underpayment penalty for failure to remit sufficient amount of estimated payment (Liability Number 2011-04110379), in the amount of \$106.70.

Taxpayers paid the \$106.70 underpayment penalty. Taxpayers, however, protested the Liability Number 2011-04110380 ("Assessment at Issue"). Taxpayers requested that the Department make the determination without an administrative hearing. This Letter of Findings ensues and addresses Taxpayers' protest of the Assessment at Issue. Additional facts will be provided as necessary.

**I. Indiana Individual Income Tax - Federal Adjustments.**

**DISCUSSION**

Pursuant to the cross-reference of the IRS RAR adjustments, the Department determined that Taxpayers had an additional \$33,920 in federal adjusted gross income than what was reported on their 2011 return. The Department thus assessed Taxpayers additional income tax, penalty, and interest. Taxpayers disagreed, stating the following:

Enclosed is the Protest Submission Form for tax year 2011 with a copy of the [Assessment at Issue] and a copy of the proposed assessment for the same year in which I paid the assessment.

Why would I be assessed a different tax for the same year? I didn't receive any documentation regarding these notices . . . .

I agree with the paid assessment however I don't believe I owe any additional tax for the year 2011. . . .

Taxpayers seemingly argued that they did not owe the Assessment at Issue because they had already paid. The issue thus is whether Taxpayers demonstrated that they did not "owe any additional tax for the year 2011."

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid 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). "[E]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting their 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); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). To efficiently and effectively compute what is considered the resident/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 his or her Indiana income tax after applying certain additions and subtractions to that starting point, with modifications thereafter.

When "the taxpayer's federal income tax liability for a taxable year" is modified by the IRS, the taxpayer is required to notify the Department by filing the amended Indiana income tax return for that year within 180 days "if the modification is made after December 31, 2010." IC § 6-3-4-6(b)(2). "For individual taxpayers, Form IT-40X must be used for this purpose." [45 IAC 3.1-1-94](#). If the taxpayer fails to notify the Department, a ten percent negligence penalty is assessed pursuant to IC § 6-8.1-10-2.1(a)(3). Additionally, when the taxpayer fails to remit sufficient amount of estimated payment for particular taxable year, an underpayment penalty is separately imposed pursuant to IC § 6-3-4-4.1(d).

Therefore, the Department is authorized to assess the taxpayer, such as Taxpayers in this instance, two (2) separate proposed assessments pursuant to two (2) separate statutory provisions. As such, one of the assessments for 2011 was a penalty-only assessment - not additional tax - for failure to remit sufficient amount of estimated payment under IC § 6-3-4-4.1(d). In other words, Taxpayers here were audited by the IRS. Based on the IRS RAR adjustments, the Department adjusted Taxpayers' federal adjusted gross income to comport with the federal record because Taxpayers failed to file their amended Indiana income tax return for 2011. In turn, in addition to the Assessment at Issue, Taxpayers were assessed a \$106.70 underpayment penalty because Taxpayers failed to remit sufficient amount of estimated tax before the statutory due date.

The Department's records showed that Taxpayers paid the \$106.70 underpayment penalty but they did not pay the Assessment at Issue. As explained earlier, the Assessment at Issue consisted of income tax on the additional \$33,920 income - determined by the IRS - plus interest and a ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1(a)(3). The total amount of the Assessment at Issue is \$1,976.98. Given the totality of the circumstances, *in the absence of other supporting documentation*, Taxpayers failed to demonstrate that (1) the Assessment at Issue based on the IRS RAR adjustments was incorrect and (2) they had paid the Assessment at Issue.

## FINDING

Taxpayers' protest is respectfully denied.

November 26, 2019

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