

**Final Order Denying Refund: 01-20191234R
Individual Income Tax
For the Year 2016**

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 is provided for the convenience of the reader and is not part of the analysis contained in this document.

HOLDING

Individual qualifies for the income tax exemption. However, Individual did not properly fill out his Federal income tax return, and in turn did not properly fill out his Indiana amended return. Thus, Individual must file correct returns in order to receive the refund.

ISSUE

I. Individual Income Tax - Refund.

Authority: IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; IC § 6-3-1-3.5; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); The Convention Between the Government of the United States of America and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, U.S.-India, Sept. 12, 1989, 90 U.S.T. 1218.

Taxpayer argues that the Indiana Department of Revenue erred in its denial of Taxpayer's refund.

STATEMENT OF FACTS

Taxpayer is an individual and filed a 2016 amended Indiana Individual Income Tax Return requesting a refund. Taxpayer requested a refund of \$124. The Indiana Department of Revenue ("Department") denied the claim because Taxpayer needed to send in documentation providing support to verify eligibility. Taxpayer protested the Department's refund denial. Taxpayer waived his administrative hearing and this decision is based on the information provided by Taxpayer. This Final Order Denying Refund results.

I. Individual Income Tax - Refund.

DISCUSSION

Taxpayer requested a refund of Indiana individual income tax for 2016. Taxpayer claims he is due a refund under the U.S.- India Income Tax Treaty. Taxpayer's refund claim was timely received but was denied by the Department for not submitting additional information to verify his eligibility under the treaty.

As an initial point, 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 initial refund determination, shall be entitled to deference.

Indiana imposes an adjusted gross income tax on all residents. IC § 6-3-2-1(a). A taxpayer's Indiana income is determined by starting with the federal adjusted gross income 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.

Taxpayer filed an amended return requesting a refund. Taxpayer explained his justification for the amended return is that "U.S.-India Income Tax Treaty (article 21) deduction was not claimed in the original return." The

referenced portion of the treaty is listed below:

ARTICLE 21
Payments Received by Students and Apprentices

1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other State principally for the purpose of his education or training shall be exempt from tax in that other State, on payments which arise outside that other State for the purposes of his maintenance, education or training.
2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he is visiting.
3. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken.
4. For the purposes of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that Contracting State in the taxable year in which he visits the other Contracting State or in the immediately preceding taxable year.

The Convention Between the Government of the United States of America and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, U.S.-India, Sept. 12, 1989, 90 U.S.T. 1218.

Thus, based on the treaty, Taxpayer is entitled to a refund. Taxpayer however did not properly fill out his Federal income tax return for 2016, therefore, his Indiana income tax return is not correct. Taxpayer did not properly account for the deduction on his federal return. Taxpayer needs to file an amended federal return. Then Taxpayer must file an amended Indiana return claiming the refund. Until Taxpayer properly files the returns, Taxpayer's protest is denied.

FINDING

Taxpayer's protest is denied.

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