

**Letter of Findings: 01-20191328
Individual Income Tax
For The Tax Years 2016-2018**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Couple was denied National Guard and Reserve Members Deduction; Employee Business Expenses Deduction; and Renter's Deduction. The Department waived penalty but could not waive interest.

ISSUES

I. Tax Administration - National Guard and Reserve Members Deduction; Employee Business Expenses Deduction; and Renter's Deduction.

Authority: IC § 6-3-2-4; IC § 6-3-2-1(a); IC § 6-3--3.5; IC § 6-3-2-2(a); Federal Form 2106 Employee Business Expense; IC § 6-3-2-6.

Taxpayers protest the denial of various deductions.

II. Tax Administration - Penalty and Interest.

Authority: IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayers protest the imposition of penalty and interest.

STATEMENT OF FACTS

Taxpayers are a married Indiana couple ("Husband" and "Wife"). After review of Taxpayers' 2016, 2017, and 2018 returns the Indiana Department of Revenue ("Department") denied various deductions. The Department made adjustment and issued assessments based on the denials. Thus, Taxpayers' protest the denial of those deductions. A hearing was held and this Letter of Findings results. Additional facts will be provided as necessary.

I. Tax Administration - National Guard and Reserve Members Deduction; Employee Business Expenses Deduction; and Renter's Deduction.

DISCUSSION

Taxpayers were denied the National Guard and Reserve Members Deduction for 2016-2017, because the Department was unable confirm Husband's military status. After a medical procedure, Husband was forced to retire from active duty in 2016. Shortly after retiring he was hired by the military as an instructor. In reviewing Husband's tax returns, the Department determined that he appeared to be receiving active duty, reserve duty, disability/retirement pension, and regular employment paychecks simultaneously. Compounding the reporting issue, the military had backdated his retirement by six months.

As a threshold issue, it is 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 department'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. Further, "[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 shall be entitled to deference.

Regarding 2016 and 2017, Indiana provided a deduction for military retirement income. IC § 6-3-2-4(a) states:

Each taxable year, an individual, or the individual's surviving spouse, is entitled to an adjusted gross income tax deduction for the first five thousand dollars (\$5,000) of income, including retirement or survivor's benefits, received during the taxable year by the individual, or the individual's surviving spouse, for the individual's service in an active or reserve component of the armed forces of the United States, including the army, navy, air force, coast guard, marine corps, merchant marine, Indiana army national guard, or Indiana air national guard. *However, a person who is less than sixty (60) years of age on the last day of the person's taxable year, is not, for that taxable year, entitled to a deduction under this section for retirement or survivor's benefits.*

(Emphasis added)

Husband must have been at least 60 years old by the end of the appropriate tax year. At the time of the administrative protest hearing in 2019, Husband was 59 years old. Thus, he was under 60 in both 2016 and 2017, and therefore not entitled to this deduction, as required by IC § 6-3-2-4(a).

In 2018 Taxpayers were denied the Form #2106 Federal Employee Business Expense Deduction. Form #2106 provides:

The form will be used by Armed Forces reservists, qualified performing artists, fee-basis state or local government officials, and employees with impairment-related work expenses. Due to the suspension of miscellaneous itemized deductions subject to the 2[percent] floor under section 67(a), employees who do not fit into one of the listed categories may not use Form 2106.

26 U.S. Code § 67(a) provides, "In the case of an individual, the miscellaneous itemized deductions for any taxable year shall be allowed only to the extent that the aggregate of such deductions exceeds 2 percent of adjusted gross income." Husband had retired prior to claiming this deduction, thus he was no longer a reservist. Taxpayers did not provide evidence that they met any of other requirements on the Form #2106. Taxpayers are not entitled to the Federal Employee Business Expense Deduction.

Taxpayers were denied the Renter's Deduction for 2018. IC § 6-3-2-6(a) provides:

Each taxable year, an individual who rents a dwelling for use as the individual's principal place of residence may deduct from the individual's adjusted gross income (as defined in [IC 6-3-1-3.5\(a\)](#)), the lesser of:

- (1) the amount of rent paid by the individual with respect to the dwelling during the taxable year; or
- (2) three thousand dollars (\$3,000). In this case,

Taxpayers rented an apartment which was not used as their principal place of residence. Therefore, they are not entitled to the deduction.

Taxpayers neither met the age requirement for IC § 6-3-2-4(a), nor met the requirements in Form #2106 and 26 USC 679(a). Lastly, they did not meet the requirements of IC § 6-3-2-6(a). Thus all deductions were denied.

FINDING

Taxpayers' protest is denied.

II. Tax Administration - Penalty and Interest.

The Department is authorized to impose a ten percent penalty for failure to timely file a required return and/or remit tax payment. IC § 6-8.1-10-2.1. Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1(d). The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides in relevant parts:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the

Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC § 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

After review of its records, the Department finds that Taxpayers do not have any outstanding liabilities or history of noncompliance. In the instant matter, Taxpayers provided sufficient documentation and analysis to support a waiver of the penalty.

However, for taxes unpaid by the due date for payment, IC § 6-8.1-10-1(b) provides for the imposition of interest. IC § 6-8.1-10-1(e) further explains that the Department is not permitted to waive interest.

Therefore, the Department will waive penalty, but Taxpayers must pay interest. However the Department takes this opportunity to note that, since Taxpayers are now aware of the issues, should the issues rise again an imposition of penalty may be warranted.

FINDING

Taxpayers protest is sustained in part and denied in part, as provided above.

SUMMARY

The Department denies the Taxpayers' protests regarding deductions. The Department denies Taxpayers' protest of interest imposed but waives penalty.

December 31, 2019

Posted: 02/26/2020 by Legislative Services Agency
An [html](#) version of this document.