

**Letter of Findings: 01-20191430
Individual Income Tax
For the Tax Year 2016**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Due to a miscalculation on his 2016 return, Individual is subject to additional Indiana income tax, however, penalty is waived on this additional income tax.

ISSUE

I. Income Tax-Imposition of Indiana Individual Income Tax.

Authority: IC § 6-8.1-5-1; IC § 6-3-2-2; IC § 6-3-2-1; IC § 6-3-1-3.5; *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); 2016 IT-40 Full-Year Resident Individual Income Tax Booklet.

Taxpayer protests the imposition of Indiana individual income tax for tax year 2016.

II. Tax Administration-Penalty.

Authority: IC § 6-8.1-10-2.1.

Taxpayer protests the imposition of penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who filed a timely 2016 Indiana income tax return ("IT-40"). The Indiana Department of Revenue ("Department") reviewed Taxpayer's IT-40 and determined that there was a discrepancy between Taxpayer's Federal Adjusted Gross Income as reported on his federal return and as reported on his IT-40. The discrepancy resulted in additional Indiana income tax, which the Department assessed along with penalty and interest. Taxpayer filed a protest and an administrative hearing was held. This Letter of Findings results. Additional facts will be supplied as necessary.

I. Income Tax-Imposition of Indiana Individual Income Tax.

DISCUSSION

The Department determined that there was a discrepancy between Taxpayer's Federal Adjusted Gross Income as reported on his 2016 IT-40 and his federal return. As a result, the Department assessed Taxpayer additional Indiana income tax, along with penalty and interest, totaling over \$2,500. Taxpayer protested stating that no such discrepancy existed and that his "Indiana income tax return is correct as filed."

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, 485 n.9

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.

In September of 2019 the Department adjusted Taxpayer's 2016 Indiana income tax return based on information that the Federal Adjusted Gross Income Taxpayer reported on his IT-40 did not match what was reported on his federal tax return. Taxpayer protested the resulting assessment and provided a copy of his IT-40, 2016 Federal return, IRS Record of Account, 2016 New York State return, and 2016 Massachusetts return. The Department reviewed Taxpayer's protest submission and verified that Taxpayer's Federal Adjusted Gross Income as reported at the federal level and the IT-40, did in fact match.

The Department corrected its assessment, however the Department also found a miscalculation on Taxpayer's IT-40 related to offset credits claimed from income tax paid to other states. Taxpayer's Indiana state income tax, as calculated on the IT-40 was \$1,693. His Indiana county tax, as calculated on the IT-40, was \$564, for a total tax of \$2,257. Taxpayer paid more than this in tax to other states, thus on the IT-40 Schedule 6, Taxpayer claimed the entire \$2,257 as a credit for taxes paid to other states. However, the credit for taxes paid to other states is for state tax only; county tax cannot be claimed. The 2016 IT-40 Full-Year Resident Individual Income Tax Booklet provides the following guidance to taxpayers regarding how to calculate the credit for taxes paid to other states. Per the instruction booklet, the lesser of the amounts calculated below is the allowable credit for taxes paid to other states:

- A. Enter the amount of tax paid to the other state. (This does not mean the tax withheld from you wages, but the actual tax figured on the other state's return)[.]
- B. Multiply the amount of income from the other state (that is subject to Indiana tax) by 3.3[percent] (.033)[.]
- C. Enter the amount of Indiana state income tax shown on Form IT-40 line 8[.] 2016 IT-40 Full-Year Resident Individual Income Tax Booklet, p.39

For Taxpayer, these amounts were \$2,367, \$1,585, and \$1,693. Accordingly, Taxpayer should have claimed a credit of \$1,585. The Department allowed a credit of \$1,693, which resulted in base tax due of \$564. Therefore, Taxpayer's actual liability for 2016 is the base tax of \$564. The imposition of penalty and interest is addressed in Issue II below.

FINDING

Taxpayer's protest is sustained in part; his liability has been adjusted.

II. Tax Administration—Penalty.

DISCUSSION

Taxpayer requests that the Department abate the penalty assessed in relation to the protested assessment. Pursuant to IC § 6-8.1-10-2.1(a) (as in effect in 2016), "a person that: . . . (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment [or] incurs, upon examination by the department, a deficiency that is due to negligence . . . is subject to a penalty." However, if the person "can show that the failure to . . . pay the full amount of tax shown on the person's return . . . was due to reasonable cause and not due to willful neglect, the department shall waive the penalty." IC § 6-8.1-10-2.1(d). Taxpayer has established that his failure to pay the full amount of tax was not due to willful neglect, but was merely a mistake. Thus, the Department will waive the penalty in this case.

FINDING

Taxpayer's protest is sustained.

SUMMARY

Taxpayer is sustained in part on Issue I. Taxpayer is sustained on Issue II.

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