DEPARTMENT OF STATE REVENUE

01-20191297.SLOF

Supplemental Letter of Findings: 01-20191297
Individual Income Tax
For the Year 2014 and 2015

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

HOLDING

Restaurant Partners established in part that the Department erred in assessing additional individual income tax based on income which "flowed through" from their Indiana restaurant business.

ISSUE

I. Individual Income Tax - Partnership Income / Calculation Errors.

Authority: IC § 6-3-4-11; IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Caterpillar, Inc*., 15 N.E.3d 579 (Ind. 2014); *Indiana Dep't of State Revenue v. Rent-A-Center East*, Inc., 963 N.E.2d 463 (Ind. 2012); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin*., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayers argue that the Department erred in assessing additional individual income tax based on income attributable to their Indiana restaurant business.

STATEMENT OF FACTS

Taxpayers are Indiana residents reporting their income on an Indiana IT-40. Taxpayers are the shareholder/partners of an Indiana restaurant business. The Indiana Department of Revenue ("Department") conducted a sales and income tax audit of Taxpayers' restaurant business. That audit found discrepancies in the restaurant's business records for the years 2014 and 2015.

The Department concluded that the restaurant received more income than originally reported. The restaurant's audit report explained that because the restaurant was operated as a partnership, "the partnership income flow[ed] through to the shareholder's/partner's individual return."

Taxpayers submitted a protest challenging the assessment of additional sales and use tax. The Department rejected the sales and use tax protest on the ground that it was "untimely." (i.e., not filed within 60 days of the date the proposed assessments were issued). Taxpayers responded stating that they had not received notice of the sales and use tax assessment. The Department disagreed explaining that the "proposed assessments" were delivered to the correct address and were not returned to the Department.

Nevertheless, Taxpayers - as the restaurant partners - also disagreed with the assessment of additional Indiana individual income tax and submitted a timely protest to that effect. A hearing was conducted by telephone during which Taxpayers' representative explained the basis for the protest. A Letter of Findings (LOF) was issued July 2019 which concluded that "Taxpayers have failed to meet their statutory burden . . . of establishing that the assessment of additional income tax was wrong" and that Taxpayers had "not sufficiently explained or developed [their] concerns."

Taxpayers disagreed with the July LOF arguing that the July 2019 LOF contained numerous errors and inconsistencies and that Department should grant their request for a rehearing on the matter. Taxpayers' request was granted, a rehearing conducted, and this Supplemental Letter of Findings results.

I. Individual Income Tax - Partnership Income / Calculation Errors.

DISCUSSION

The issue is whether Taxpayers have provided sufficient documentation to establish that the Department erred when it assessed Taxpayers additional Indiana income tax.

Because the audit resulted in an assessment of additional tax, it becomes the Taxpayers' responsibility to establish that the assessment including interest, penalty, and tax 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 Dep't of State Revenue v. Rent-A-Center East*, Inc., 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

When a taxpayer challenges taxability in a specific instance, that taxpayer is required to provide documentation explaining and supporting its challenge. 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). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc*., 15 N.E.3d 579, 583 (Ind. 2014).

Partners are responsible for reporting and paying income tax based on their interest in a partnership. IC § 6-3-4-11 provides:

> (a) A partnership as such shall not be subject to the adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7. Persons or corporations carrying on business as partners *shall be liable for the adjusted gross income tax only in their separate or individual capacities*. In determining each partner's adjusted gross income, such partner shall take into account his or its distributive share of the adjustments provided for in IC [§] 6-3-1-3.5.
>
> (b) The adjustments provided for in IC [§] 6-3-1-3.5 shall be allowed for the taxable year of the partner within or with which the partnership's taxable year ends.

(*Emphasis added*).

In this case, Taxpayers' assessment is attributed to the Department's audit of Taxpayers' restaurant business. The audit found "variances" between the gross receipts reported on the restaurant's 2014 and 2015 form 1065 ("U.S. Return of Partnership Income") and the restaurant's 2014 and 2015 bank deposits. The audit report stated that these variances "were determined to be business related deposits." As explained in the restaurant's audit report:

> The total [bank] deposits deemed as business related deposits were greater than the gross receipts reported; therefore, the variances are being assessed as unreported taxable revenues.

Taxpayers point to a series of six purported errors in the audit report.

- Taxpayers points to a bank deposit of $31,629 which Taxpayers explains was an amount which "never hit the bank account" but was simply an amount of exempt capital gains.
- Secondly, Taxpayers also explain that a series of twelve $2,508.93 payments ($30,107.16 total) were payments from an individual retirement account, were deposited in their bank account, and were not subject to income tax.
- Thirdly, Taxpayers explains that a $2,700 deposit was a loan payment and was also not subject to income tax.
- Fourthly, Taxpayers explain that the Department's audit erroneously included an $8,400 amount which, in reality, consisted of "rents received" which was not subject to income tax.
- Fifthly, Taxpayers state that the Department's audit made a "typographical error." Instead of listing a $94.99 bank deposit, it listed the deposit as $9,499. In other words, the Department misplaced the decimal point when it recorded the deposit.
- Finally, Taxpayers state that the Department's audit made a second "typographical error." Instead of listing a $36.92 bank deposit, the audit listed a $3,692 deposit. Again, the cited discrepancy reflects an apparent decimal point error.

Taxpayers calculate that the Department overestimated the amount of income subject to tax by approximately $85,895 - the six errors listed above total $85,895. Taxpayers point to these six errors, asks that the errors be corrected, and that the assessment be adjusted to reflect the adjustment.

The Department has reviewed the documents presented and is unable to agree that Taxpayers have met their statutory burden under IC § 6-8.1-5-1(c) of establishing that the first five cited instances were "wrong." Taxpayers have not documented that the $31,629 should not have been included as an amount subject to income tax and that the amount should not have been listed as a bank deposit. Taxpayers have failed to establish that an amount of $31,629 Taxpayers categorize as "capital gains" reflected income exempt from tax.

Similarly, Taxpayers have failed to establish that the $30,107.16 consisted of retirement income payments or that the $2,700 constituted a "loan payment" exempt from income tax.

Finally, Taxpayers have failed to establish that the $8,400 bank deposit consisted of a rent payment not subject to income tax.

However, Taxpayers have provided documentation which supports their contention that the Department misreported the $9,499 and $3,692 amounts. Taxpayers supplied original bank documents recording a credit card company's reimbursements of $36.92 and $94.99.

To the extent that the Department over-reported the amount of the credit card reimbursements by $13,059.09, Taxpayers' protest is sustained.

FINDING

Subject to audit review, Taxpayers' argument that the Department overstated Taxpayers' income by $13,059.09 is sustained. In all other respects, Taxpayers' protest is respectfully denied.

December 31, 2019

Posted: 04/01/2020 by Legislative Services Agency
An html version of this document.