

Letter of Findings: 01-20191366
Individual Income Tax
For the Year 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Despite issuing the Department an I.R.S. 4852 substitute form W-2 indicating he received no taxable income, Indiana Individual was required to report and pay Indiana individual income tax because the compensation received from the company for which he worked constituted "wages" subject to federal and state tax.

ISSUES

I. Individual Income Tax - Private Employer Compensation.

Authority: IC § 6-3-1-3.5(a); IC § 6-3-1-8; IC § 6-8.1-5-1(c); I.R.C. § 61(a); I.R.C. § 62; I.R.C. § 62(a); I.R.C. § 3121; I.R.C. § 7701; *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); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *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); *Snyder v. Indiana Dept. of State Revenue*, 723 N.E.2d 487 (Ind. Tax Ct. 2000); *United States v. Connor*, 898 F.2d 942 (3d Cir. 1990); *Wilcox v. Commissioner of Internal Revenue*, 848 F.2d 1007 (9th Cir. 1988); *Coleman v. Commissioner of Internal Revenue*, 791 F.2d 68 (7th Cir. 1986); *United States v. Koliboski*, 732 F.2d 1328 (7th Cir. 1984).

Taxpayer argues that money paid to him by the business for whom he worked does not constitute taxable "wages" for purposes of the Indiana individual income tax.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who filed a 2018 individual income tax return. The Indiana Department of Revenue ("Department") reviewed the return and found what the Department characterized as an "error." The Department sent Taxpayer a letter dated June 2019 explaining that the amount of his reported income was erroneous. The Department notified Taxpayer that his "requested refund [had] been denied" and that he owed additional Indiana income tax.

Taxpayer responded in a letter dated that same month explaining that he had submitted an I.R.S. 4852, "Substitute for Form W-2, Wages and Tax Statement," correcting the amount of income originally reported on the Form W-2 issued by his employer. The Form 4852 reported that Taxpayer had received no taxable income during 2018. Taxpayer further explained that he did not receive taxable "wages" because he was a "private-sector citizen" and a "non-federal entity." According to Taxpayer, he was not engaged in a "trade or business," was not an "officer of a corporation," and "did not engage in any [f]ederally privileged taxable activity."

The Department disagreed with Taxpayer's conclusion that he was not subject to Indiana's income tax and issued a proposed assessment. Taxpayer disagreed and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer further explained the basis for his protest. This Letter of Findings results.

I. Individual Income Tax - Private Employer Compensation.

DISCUSSION

Taxpayer argues that the business for which he works mischaracterized the money paid him as "wages," that he was not an "employee" of the business, that the amounts withheld by the business were incorrect, and that he

had received no taxable income. Taxpayer seeks a refund of the money withheld by the business for which he works on the ground that he works for a "Foreign For-Profit Corporation" which had issued an erroneous Form W-2 containing "bad payer data."

In this instance, Taxpayer's protest stems in part from the Department's assessment of additional individual income tax along with the decision denying a refund of tax. As a threshold issue, such 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 its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopolite 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).

The Indiana Adjusted Gross Income Tax Act defines "adjusted gross income," in the case of individuals, as the term is defined in I.R.C. § 62 with certain limitations specific to Indiana. IC § 6-3-1-3.5(a). Thus "adjusted gross income" is, "in the case of an individual, gross income minus . . . [certain] deductions." I.R.C. § 62(a). Similarly, the Indiana Act incorporates the definition of "gross income" as found in I.R.C. § 61(a). IC § 6-3-1-8. Therefore, "gross income" consists of "*all income from whatever source derived . . .*" I.R.C. § 61(a) (*Emphasis added*).

Taxpayer points to a number of provisions in the Internal Revenue Code which provide that an "employee" includes "an officer, employee, or elected official of the United States, a State, or any political subdivision thereof . . ." I.R.C. § 7701. Among numerous other provisions, Taxpayer cites to I.R.C. § 3121 which explains that residents of the "District of Columbia, the commonwealth of Puerto Rico, the Virgin Islands, Guam, and America Samoa" are subject to the federal income tax. Taxpayer explains that he does not fall into any of these categories; he is not a resident of Puerto Rico or Samoa and is not an elected official.

Taxpayer's analysis of these provisions fails because the authorities on which he relies are statutes of inclusion - they provide specific instances in which the individuals cited *are* subject to income. The authorities provide specific instances in which residents of certain jurisdiction *are* subject to income tax.

The Department is prepared to agree that Taxpayer is likely not a resident of Samoa and is likely not an elected official. However, none of this excludes Taxpayer from coming within the purview of both federal and Indiana's income tax laws.

Taxpayer's written submission is detailed, lengthy, and laden with legal citations and exhibits. However what appears to be the underlying contention - that a compensation paid by a private, non-governmental organization is exempt from income tax - does not survive scrutiny. The Internal Revenue Code's definition of "gross income" as "income from whatever source derived . . ." is as clear and unambiguous a statement as anything ever likely to be found in either the Internal Revenue Code or the Indiana tax code.

Both federal and state courts have consistently, repeatedly, and without exception determined that individual wages - whether received from the government, the District of Columbia, corporations, or private entities - constitute income subject to taxation. *United States v. Connor*, 898 F.2d 942, 943 (3d Cir. 1990) (The court stated that "[e]very court which has ever considered the issue has unequivocally rejected the argument that wages are not income"); *Wilcox v. Commissioner of Internal Revenue*, 848 F.2d 1007, 1008 (9th Cir. 1988) ("First, wages are income."); *Coleman v. Commissioner of Internal Revenue*, 791 F.2d 68, 70 (7th Cir. 1986) ("Wages are income, and the tax on wages is constitutional."); *United States v. Koliboski*, 732 F.2d 1328, 1329 n.1 (7th Cir. 1984) ("Let us now put [the question] to rest: WAGES ARE INCOME. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages - or salaries - are not taxable.") (EMPHASIS IN ORIGINAL).

In addressing the question raised by Taxpayer, the Indiana Tax Court has held that, "Common definition, an overwhelming body of case law by the United States Supreme Court and federal circuit courts, and this Court's opinion . . . all support the conclusion that wages are income for purposes of Indiana's adjusted gross income tax." *Snyder v. Indiana Dept. of State Revenue*, 723 N.E.2d 487, 491 (Ind. Tax Ct. 2000).

Taxpayer's belief, that his compensation is not subject to Indiana's adjusted gross income tax because he works for and is compensated by a "Foreign For-Profit Corporation" company, is mistaken.

FINDING

Taxpayer's protest is denied.

December 4, 2019

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