

**Letter of Findings: 01-20191433
Individual Income Tax
For the 2016 Tax Year**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 demonstrated that they qualified for additional dependent deductions and therefore did not owe further tax for 2016.

ISSUE

I. Income Tax - Exemption for Dependents.

Authority: IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-8.1-5-1; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Treas. Reg § 1.151-3; Income Tax Information Bulletin #117 (February 2019).

Taxpayers protest the Department's income tax assessment.

STATEMENT OF FACTS

Taxpayers filed jointly in 2016 and claimed four exemptions in Indiana based on their federal return. Taxpayers also claimed two additional dependent exemptions. The Indiana Department of Revenue ("Department") reviewed Taxpayers' records and denied their additional exemptions for dependents. This adjustment resulted in additional tax due for 2016. The Department therefore issued proposed assessments for additional individual income tax, penalties, and interest. Taxpayers protested these assessments and a hearing was held. This decision results. Further facts will be supplied as necessary.

I. Income Tax - Exemption for Dependents.

DISCUSSION

The Department denied the additional dependent exemption because it was unable to verify that Taxpayers qualified for the exemption. The Department issued proposed assessments based on this denial. Taxpayers argue that the dependents are foster children, which would qualify for the additional dependent exemption.

As a threshold issue, it is the Taxpayers' 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." See also *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012) and *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). The taxpayer must provide documentation explaining and supporting its challenge that the Department's assessment is wrong.

Indiana imposes an adjusted gross income tax on all residents. IC § 6-3-2-1. A taxpayer's Indiana income is determined by starting with the federal income and making certain adjustments. IC § 6-3-1-3.5. One of those adjustments is a \$1,500 exemption for each child of the taxpayer younger than nineteen years old. See IC § 6-3-1-3.5(a)(5)(A) (incorporating IRC § 151(c)(1)(B) as in effect January 1, 2004). A foster child would qualify for an exemption at the Federal level. Treas. Reg § 1.151-3(a). A recent income tax Information Bulletin supports this definition, stating:

The child must be a son, stepson, daughter, or stepdaughter of the taxpayer or an individual under the

guardianship of the taxpayer. Adopted children are treated as natural children of the adoptive parent(s).
Foster children who live with the taxpayer for the entire year also are treated as natural children of the taxpayer.

Income Tax Information Bulletin #117 (February 2019) 20190227 Ind. Reg. 045190132NRA (*Emphasis added*).

Taxpayers claim that their two dependents in 2016 were foster children under the age of nineteen. To support this claim, Taxpayers provided placement letters dated October 2015 from the Indiana Department of Child Services for each of the two children. These letters include birth dates, showing that each child was under nineteen in the 2016 tax year. Finally, taxpayer provided two additional letters, which show the children were in Taxpayers' custody through 2019, and a Petition for Adoption for each of the two children.

Taxpayers have sufficiently demonstrated that they qualify for two \$1,500 exemptions listed in IC §6-3-1-3.5(a)(5)(A). Taxpayers' protest is therefore sustained. The exemptions will be restored and the Schedule IN-DEP for 2016 provided by the Taxpayers will be included with their 2016 return.

FINDING

Taxpayers' protest is sustained.

January 17, 2019

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