

**Letter of Findings: 01-20191362
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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Non-resident Individual provided documentation supporting their position that the Department's proposed assessment of additional Indiana individual income tax was incorrect for the year at issue.

ISSUE

I. Income Tax-Burden of Proof Assessment Incorrect.

Authority: IC § 6-8.1-5-1; IC § 6-3-2-2; IC § 6-3-2-1; *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); Income Tax Information Bulletin #39 (August 2015).

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

STATEMENT OF FACTS

Taxpayer is an Illinois resident who filed a 2016 Indiana income tax return which reported \$2,197 in Indiana income, \$1,450 in Indiana withholdings, and claimed a refund of \$1,386. The Indiana Department of Revenue ("Department") reviewed Taxpayer's return and disallowed the \$1,450 in withholdings. Taxpayer protested and the Department was able to substantiate the \$1,450 withholdings. However, at the same time, the Department determined that Taxpayer had not reported his Indiana income and thus adjusted Taxpayer's return to reflect \$43,930 in Indiana income. This resulted in a tax assessment of just over \$20. Taxpayer protested this assessment and waived his right to a hearing. Therefore, this Letter of Findings is based on information from the file and discussions with Taxpayer's representative. Additional facts will be provided as necessary.

I. Income Tax-Burden of Proof Assessment Incorrect.

DISCUSSION

The Department initially disallowed Taxpayer's claimed Indiana withholdings on his 2016 income tax return. However, the Department was able to verify those withholdings and ultimately allowed them. At the same time, the Department determined that Taxpayer had failed to accurately report his Indiana income. Therefore, the Department adjusted his return to include income of \$43,930, resulting in a tax liability of just over \$20. Taxpayer protests this assessment stating that because Taxpayer is a professional gambler, his income is reported on the Federal Schedule C and allocated to Indiana via Schedule A.

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, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes an adjusted gross income tax on "that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). For a nonresident individual, "adjusted gross income derived from sources with Indiana" includes:

- (1) income from real or tangible personal property located in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state; and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property

IC § 6-3-2-2(a)

Contemplated in this list are "[w]innings from Indiana's riverboats, casinos, and lotteries." Income Tax Information Bulletin # 39 (August 2015) 20150826 Ind. Reg. 045150279NRA.

Taxpayer is a nonresident who claims to be a professional gambler. During tax year 2016, he had gambling winnings in Indiana. His total winnings for the year were reported on his Federal Schedule C and allocated to the various states in which he had winnings. Taxpayer's original return reported Indiana income on Schedule A and verified withholdings were credited against this reported income, resulting in a refund due to Taxpayer of \$1,386. To be clear, the issues at protest did not include Taxpayer's status as a professional gambler, nor was the amount of income reported at issue. Therefore, this decision does not address these issues. This decision merely agrees with Taxpayer's argument that the withholdings reported were valid and that Taxpayer did in fact report Indiana income in his original return. Therefore, regarding the issues at protest, Taxpayer is sustained.

FINDING

Taxpayer's protest is sustained.

March 6, 2020

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