

**Letter of Findings: 01-20191586
Individual Income Tax
For the Tax Year 2016**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

HOLDING

Individual provided sufficient documentation to prove the Department improperly adjusted Individual's return.

ISSUES

I. Individual Income Tax - Federal Discrepancy.

Authority: IC § 6-3-1-8; IC § 6-8.1-5-1; IC § 6-3-1-3.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [45 IAC 3.1-1-1](#); IRC § 61; I.R.C. § 62.

Taxpayer protests the assessment of individual income tax.

II. Tax Administration - Penalty and Interest.

Authority: IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the Department's imposition of penalty and interest.

STATEMENT OF FACTS

Taxpayer is an Indiana resident. As the result of a record's comparison with the Internal Revenue Service ("IRS"), the Indiana Department of Revenue ("Department") found that Taxpayer's federal-reported adjusted gross income did not match the Indiana-reported adjusted gross income tax. The Department therefore issued a proposed assessment for tax on the difference between the two reported adjusted gross income amounts. Taxpayer protested the assessment, the Department held a hearing, and this Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - Federal Discrepancy.

DISCUSSION

Taxpayer worked two jobs for the first two weeks of 2016. Taxpayer forgot to include the income from one of her W-2s. There was a discrepancy between the two reported amounts, and the Department imposed Indiana income tax on the difference. Taxpayer claims that she corrected that mistake with the IRS but failed to do so with Indiana. During the protest process, Taxpayer provided the Department with her 2016 federal returns.

As a threshold issue, it is Taxpayer's 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." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

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*).

Both the statute, IC § 6-3-1-3.5, and the accompanying regulation, [45 IAC 3.1-1-1](#), require that an Indiana taxpayer employ the Federal adjusted gross income calculation, as determined under I.R.C. § 62, as the starting point for determining the taxpayer's Indiana adjusted gross income.

Taxpayer admits that she forgot to include her income from the second W-2 for 2016. She corrected it with the IRS and provided the 2016 Federal returns with the Department. Taxpayer admitted she needed to adjust her return and owes the resulting tax due. Taxpayer has filed the return and thus the protest of base tax is moot.

FINDING

Taxpayer's protest is denied.

II. Tax Administration - Penalty and Interest.

DISCUSSION

Additionally, Taxpayer protest the imposition of penalty and interest. The Department is authorized to impose a ten percent penalty for failure to timely file a required return and/or remit tax payment. IC § 6-8.1-10-2.1. Penalty waiver is required if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1(d). The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides in relevant part:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC § 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

After review of its records, the Department finds that Taxpayer has filed her returns in a timely manner. Also, Taxpayer otherwise has a good record of fulfilling her Indiana tax filing duties.. Thus, the Department will waive penalty. Additionally, Taxpayer protests the Department's imposition of interest on its tax liability. IC § 6-8.1-10-1(e) further explains that the Department is not permitted to waive interest. Therefore, waiver of interest is inappropriate.

FINDING

Taxpayer's protest is sustained for penalty, denied for interest.

August 11, 2020

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