

Letter of Findings: 01-20200255
Indiana Individual Income Tax
For the Tax Years 2016, 2017, and 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual demonstrated that she was a nonresident, who rendered her services outside of Indiana. As such, she was entitled to the refund of tax withheld on her behalf, and the proposed assessment was erroneously issued.

ISSUE

I. Indiana Individual Income Tax - Indiana Source Income.

Authority: IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; IC § 6-8.1-5-2; IC § 6-8.1-9-1; *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); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *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); *Schmidt v. Indiana Department of State Revenue*, 81 N.E.3d 705 (Ind. Tax Ct. 2017); [45 IAC 15-9-2](#).

Taxpayer protests the Department's decision denying her refund of tax for 2016, 2017, and 2018, as well as a proposed assessment for 2016.

STATEMENT OF FACTS

Taxpayer is an individual who currently resides in the State of Washington ("Washington") and works for a company headquartered in Indiana ("Indiana Employer"). Periodically, the Indiana Employer withholds tax on wages paid to Taxpayer and remits to Indiana. Taxpayer files an IT-40PNR (Indiana Part-Year Resident or Full-Year Nonresident) return, reporting her income tax before April 15 of the following year, as statutorily required.

In March 2020, in addition to filing an original IT-40PNR return for 2016, Taxpayer amended her returns for tax years 2017, and 2018 (collectively, "Tax Years at Issue"), requesting a refund for those years. Upon an initial review, the Indiana Department of Revenue ("Department") determined that Taxpayer had income attributable to Indiana for the Tax Years at Issue. As a result, the Department adjusted Taxpayer's 2016 return and proceeded to assess additional tax, penalty, and interest. The Department also denied Taxpayer's refund request for those years.

Taxpayer timely protested the assessment and the refund denial. An administrative hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Indiana Source Income.

DISCUSSION

The Department, upon the initial review of Taxpayer's filings, found that Taxpayer worked for the Indiana Employer during the Tax Years at Issue. As such, the Department determined that Taxpayer properly reported and paid Indiana income tax on income attributable to Indiana. The Department made "line-by-line" adjustments for 2016 and assessed Taxpayer additional income tax pursuant to IC § 6-8.1-5-2. In addition, the Department denied Taxpayer's refund request for those years on the same basis.

Taxpayer disagreed, arguing that during the Tax Years at Issue, she was not an Indiana resident. Taxpayer

maintained that for those years, she had an arrangement with her Indiana Employer that she worked outside of Indiana and therefore her income was not income attributable to Indiana. Taxpayer thus claimed that she was entitled to the refund because her income was not income attributable to Indiana subject to Indiana income tax. The issue in this case therefore is whether Taxpayer demonstrated that she was not liable for Indiana income tax and was entitled to the refund because as a nonresident she did not have any income that was attributable to Indiana.

As a threshold issue, all 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). Therefore, 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. *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).

In addition, under Indiana tax law, when a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a refund claim "within three (3) years of . . . [t]he due date of the return [or] . . . [t]he date of payment" under IC § 6-8.1-9-1(a). To request a refund of income tax, a taxpayer is required to file an original income tax return or amend his or her income tax return. The taxpayer also must clearly state "the amount of the refund," "detailed explanation of the basis of the claim such that the department may determine its correctness," "the tax period for which the overpayment is claimed," and "the year and date of the overpayment." [45 IAC 15-9-2\(d\)](#).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). Indiana resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12. Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

To efficiently compute Indiana resident's state income tax, the Indiana law references the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be the taxpayer's Indiana income tax after applying certain additions and subtractions to that starting point. IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources subject to Indiana income tax, in part, as follows:

With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (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 to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.

In this instance, the Department does not dispute that Taxpayer was a nonresident during the Tax Years at Issue. However, the Department reviewed Taxpayer's filings, determining that Taxpayer received income from the Indiana Employer for those years and her income was subject to Indiana income tax because her income was derived from an Indiana source pursuant to the Indiana law. More specifically, Taxpayer has been an employee rendering her services to the Indiana Employer headquartered in Indiana. The Indiana Employer withheld tax on wages paid to Taxpayer for those years. Therefore, there is a rebuttable presumption that Taxpayer properly reported her income to Indiana and was responsible for Indiana income tax because Taxpayer - as an employee of the Indiana Employer headquartered in Indiana - has received "compensation for labor or services rendered within [Indiana]" under IC § 6-3-2-2(a)(4). *Cf. Schmidt v. Indiana Department of State Revenue*, 81 N.E.3d 705, 712 (Ind. Tax Ct. 2017) (explaining that the compensation the petitioner received was not Indiana source income because the "unrebutted evidence" showed that the petitioner rendered services for an Indiana company "from

outside the state by telephone and did not perform any personal services while physically located in Indiana . . . as required by the plain meaning of the imposition statute").

Throughout the protest process, Taxpayer asserted that she did not have income attributable to Indiana. Taxpayer's supporting documentation stated that the Indiana Employer is in the "business of providing software support and consulting services" to customers. As such, she conducted her work remotely by teleconferencing and was not required to be onsite at the headquarters of her Indiana Employer or clients' locations in Indiana. Taxpayer therefore contended that her wages were not Indiana source income subject to Indiana income tax. To support her protest, in addition to the utility statements of her residence in Washington, Taxpayer offered a copy of her employment contract and a letter from her Indiana Employer detailing the nature of her work and her job responsibility, which included the job locations - outside of Indiana - where Taxpayer rendered her services during the Tax Years at Issue.

Upon review, given the totality of the circumstances, the Department is prepared to agree that for the Tax Years at Issue, Taxpayer presented sufficient documentation to rebut the presumption that her services were performed in Indiana. In other words, Taxpayer's supporting documents demonstrated that she received compensation for labor or services rendered outside of Indiana. Thus, Taxpayer's compensation from the Indiana Employer for those years was not subject to Indiana income tax pursuant to IC § 6-3-2-2(a)(4).

In short, the Department incorrectly adjusted Taxpayer's 2016 filing and denied her refund request for the Tax Years at Issue. Nonetheless, as mentioned above, "[e]ach assessment and each tax year stands alone." *Miller Brewing*, 903 N.E.2d at 69. Taxpayer is required to document the same if similar circumstances reoccur in different tax years.

FINDING

Taxpayer's protest is sustained.

August 18, 2020

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An [html](#) version of this document.