

**Letter of Findings: 01-20200060
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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual provided sufficient documentation showing that she was an innocent spouse and had no knowledge of her deceased spouse's actions.

ISSUE

I. Individual Income Tax - Innocent Spouse.

Authority: [IC 6-8.1-5-1](#); IC § 6-3-4-2; IRC § 6015; *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); IRS Form 8857.

STATEMENT OF FACTS

Taxpayer is an individual and claims to be an innocent spouse after discovering her late husband withdrew large sums of money from their joint retirement account. The Indiana Department of Revenue ("Department") issued a proposed income tax assessment for tax year 2016 based on the amount withdrawn. Taxpayer protested the proposed assessments. A hearing was conducted and this Letter of Finding results. Additional facts will be provided, as necessary.

I. Individual Income Tax - Innocent Spouse.

DISCUSSION

On October 23, 2017 Taxpayer, filed a 2016 Indiana Tax Return jointly on behalf of her and her deceased husband ("Husband"). Husband passed away in 2016. The Department discovered a discrepancy with Taxpayers' Federal return and Taxpayers' Indiana return. The Department assessed Taxpayers on November 22, 2019 and Taxpayer protested on January 28, 2020.

Taxpayer claims that she is an innocent spouse because Husband made large withdrawals during the 2016 tax year, from their joint retirement accounts and gave the money to another individual. Taxpayer states that Husband forged her signature on the documents to make those withdrawals. Taxpayer explains that she was unaware of and uninvolved in Husband's actions. Moreover, because she was unaware, she could not have reported the income.

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.

Central to this issue is IC § 6-3-4-2, which provides:

- (a) If an individual is deceased, the return of such individual shall be made by the individual's executor, administrator, or other person charged with the property of such decedent.
- (b) If an individual is unable to make a return, the return of such individual shall be made by a duly authorized agent, the individuals committee, guardian, fiduciary, or other person charged with the care of the person or property of such individual.
- (c) Returns of an estate or a trust shall be made by the fiduciary thereof.
- (d) Where a joint return is made by husband and wife pursuant to the Internal Revenue Code, a joint return shall be made pursuant to this article. Where a joint return is filed by a husband and wife hereunder, one spouse shall have no liability for the tax imposed by this article upon the income of the other spouse.*
- (e) Where separate returns are made by husband and wife pursuant to the Internal Revenue Code, separate returns shall be made pursuant to this article.

(Emphasis added).

Additionally, I.R.C § 6015 provides the following:

- (a) In general.--Notwithstanding section 6013(d)(3)--
 - (1) an individual who has made a joint return may elect to seek relief under the procedures prescribed under subsection (b); and
 - (2) if such individual is eligible to elect the application of subsection (c), such individual may, in addition to any election under paragraph (1), elect to limit such individual's liability for any deficiency with respect to such joint return in the manner prescribed under subsection (c).

Any determination under this section shall be made without regard to community property laws.

- (b) Procedures for relief from liability applicable to all joint filers.--

- (1) In general.--Under procedures prescribed by the Secretary, if--
 - (A) a joint return has been made for a taxable year;
 - (B) on such return there is an understatement of tax attributable to erroneous items of one individual filing the joint return;
 - (C) the other individual filing the joint return establishes that in signing the return he or she did not know, and had no reason to know, that there was such understatement;
 - (D) taking into account all the facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for such taxable year attributable to such understatement; and
 - (E) the other individual elects (in such form as the Secretary may prescribe) the benefits of this subsection not later than the date which is 2 years after the date the Secretary has begun collection activities with respect to the individual making the election,

then the other individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such understatement.

- (2) Apportionment of relief.--If an individual who, but for paragraph (1)(C), would be relieved of liability under paragraph (1), establishes that in signing the return such individual did not know, and had no reason to know, the extent of such understatement, then such individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent that such liability is attributable to the portion of such understatement of which such individual did not know and had no reason to know.

(3) Understatement.--For purposes of this subsection, the term "understatement" has the meaning given to such term by section 6662(d)(2)(A).

Taxpayer provided documentation including her W-2s, IN-40SP Innocent Spouse Worksheet, case law, Indiana Innocent Spouse Relief Form 8857, and documents showing the difference between her signature and the purported forged signature. Taxpayer's Exhibits D and E are copies of bank signature cards, which look entirely different from and predate Exhibit C Taxpayer's signature examples from IRS documents, which is the document Taxpayer contends Husband forged. The two signatures are plainly different.

Taxpayer cites IC § 6-3-4-2(d) as applicable in this protest because Taxpayer filed a joint return. IC § 6-3-4-2(d) explains that where a husband and wife file a joint return, one spouse will have no liability for the tax imposed upon the income of the other spouse. Taxpayer argues that this is the case here. Taxpayer claims to be an innocent spouse who should have no liability for her deceased husband's actions.

I.R.C § 6015(b) provides the process for Taxpayer's to seek relief. First Taxpayer filed a joint return for the taxable year. Additionally, in this case there is an understatement of tax attributable to Husband. Taxpayer timely filed a joint return according to the information that she was aware of. The forged signatures and withdrawals were unknown to Taxpayer at the time of filing. Thus, they were not included on the joint return and she is not liable for income tax on those amounts since she is an innocent spouse according to statutes and I.R.C. Taxpayer signed and timely filed the return establishing that she had no reason to know that there was such an understatement. In this case, the Department is convinced that Wife should be relieved of the liability based on I.R.C § 6015(b) and IC § 6-3-4-2.

FINDING

Taxpayer's protest sustained.

September 15, 2020

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