

**Supplemental Letter of Findings: 01-20200335
Indiana Individual Income Tax
For Tax Year 2019**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Supplemental Letter of Findings.

HOLDING

During rehearing process, Individual provided additional supporting documents demonstrating that he did not receive income from real property located in Indiana. As such, he was not liable for additional Indiana income tax.

ISSUE

I. Indiana Individual Income Tax - Indiana Income.

Authority: IC § 6-3-2-1; IC § 6-3-2-2; 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); *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).

Taxpayer protests the Department's refund denial and additional assessment for 2019.

STATEMENT OF FACTS

Taxpayer is an individual who currently resides in the State of Georgia ("Georgia"). Taxpayer maintains a separate residence and a rental property in Indiana.

In early 2020, Taxpayer timely filed an IT-40PNR (Indiana Part-Year Resident or Full-Year Nonresident) return for 2019. On his 2019 IT-40PNR return, Taxpayer stated that he had zero (\$0) Indiana income, requesting a full refund of tax withheld on his behalf. The Indiana Department of Revenue ("Department") reviewed the information and determined that Taxpayer was an Indiana resident and had Indiana income in 2019. As such, the Department adjusted Taxpayer's filing, denying Taxpayer's refund request; in turn, resulting in additional income tax assessment.

Taxpayer protested both the refund denial and assessment. After a phone hearing, in the Letter of Findings 01-20200160 ("LOF"), the Department found that for 2019, Taxpayer was not a full-year Indiana resident and he had Indiana source income subject to Indiana income tax.

Taxpayer submitted additional documentation, requesting a rehearing, which was granted. This Supplemental Letter of Finding ensues, references, and incorporates all relevant and applicable statutes, regulations, and facts discussed in the LOF, addressing Taxpayer's protest. Additional facts will be provided, as necessary.

I. Indiana Individual Income Tax - Indiana Income.

DISCUSSION

Based on the publicly verifiable information, the Department's records, and documentation submitted, the LOF concluded that for 2019, Taxpayer was not a full-year Indiana resident. But, the LOF determined that Taxpayer had Indiana source income and owed Indiana income tax.

Taxpayer disagreed, asserting that he was entitled to a full refund. Taxpayer stated that he did not receive any income from the real property in Indiana during 2019. As such, Taxpayer argued that he did not owe any Indiana income tax for 2019. Therefore, the issue is whether Taxpayer demonstrated that he did not have any Indiana income during 2019.

As previously mentioned in the LOF, 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. 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).

Also, as mentioned in the LOF, Indiana imposes a tax "on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a)(1) specifically includes "income from real or tangible personal property located in this state." In this instance, Taxpayer maintains a rental property located in Indiana since 2013. As such, that income is income subject to Indiana income tax under IC § 6-3-2-2(a)(1).

Throughout the rehearing process, Taxpayer reiterated that he did not receive any income from the rental property located in Indiana during 2019. Taxpayer maintained that in 2019 both he and his ex-wife agreed that the rental property was to be transferred to his ex-wife pursuant to a settlement agreement concerning their divorce. As such, for 2019, his ex-wife received all income - and was responsible for all expenses, including taxes - associated with that Indiana rental property. To support his protest, Taxpayer further offered his ex-wife's statement in addition to her 2019 income tax filings and the recorded Quitclaim Deed concerning that Indiana rental property.

Upon review, given the totality of the circumstances, the Department is prepared to agree that Taxpayer's supporting documents demonstrated that he did not receive any income attributable to Indiana and therefore his income for 2019 was not subject to Indiana income tax.

In short, the Department incorrectly adjusted Taxpayer's 2019 filing and denied his refund request. 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.

September 1, 2020

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