

Memorandum of Decision Number: 01-20200360R
Indiana Individual Income Tax
For The 2019 Tax Year

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this final determination.

HOLDING

Individual demonstrated that he was a nonresident, who rendered his services outside of Indiana. As such, he was entitled to the refund of tax withheld on his behalf.

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; *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Schmidt v. Indiana Department of State Revenue*, 81 N.E.3d 705 (Ind. Tax Ct. 2017).

Taxpayer protests the Department's decision denying his tax refund for 2019.

STATEMENT OF FACTS

Taxpayer is an individual who currently resides in United Kingdom and works for a company headquartered in Virginia, United States. The employer withheld tax on wages paid to Taxpayer during 2019 and remitted to Indiana. Taxpayer timely filed a 2019 IT-40PNR (Indiana Part-Year Resident or Full-Year Nonresident) return, requesting a refund.

Upon an initial review, the Indiana Department of Revenue ("Department") determined that Taxpayer had income attributable to Indiana. As a result, the Department adjusted Taxpayer's 2019 return, granting a partial refund of \$90.

Taxpayer timely protested the partial refund denial and requested that the Department make the final determination based on the information submitted. This final determination 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 filing, determined that Taxpayer had Indiana income and was responsible for the tax on income attributable to Indiana. The Department made an adjustment and refunded \$90 to Taxpayer.

Taxpayer disagreed, arguing that he was not an Indiana resident and did not live or work in Indiana during 2019. Taxpayer maintained that he lived and worked in United Kingdom since October 2018. The issue in this case therefore is whether Taxpayer demonstrated that he was not liable for Indiana income tax and was entitled to the full refund because as a nonresident he did not have any income that was attributable to Indiana.

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 2019. However, the Department reviewed Taxpayer's filing, determining that for 2019, Taxpayer's income was derived from an Indiana source pursuant to the Indiana law because his employer reported and remitted the withholding tax to Indiana. In other words, Taxpayer was presumed to have 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"). Therefore, there is a rebuttable presumption that his income was subject to Indiana income tax.

Throughout the protest process, Taxpayer asserted that he did not have income attributable to Indiana. Taxpayer's supporting documentation further demonstrated that he did not live or work in Indiana.

Upon review, given the totality of the circumstances, the Department is prepared to agree that for 2019, Taxpayer presented sufficient documentation to rebut the presumption that his services were performed in Indiana. In other words, Taxpayer's supporting documents demonstrated that he received compensation for labor or services rendered outside of Indiana. Thus, Taxpayer's compensation received in 2019 was not subject to Indiana income tax pursuant to IC § 6-3-2-2(a)(4).

In short, the Department incorrectly adjusted Taxpayer's 2019 filing and denied his refund request for 2019. Nonetheless, as mentioned above, "[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). Taxpayer is required to document the same if similar circumstances reoccur in different tax years.

FINDING

Taxpayer's protest is sustained.

September 29, 2020

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