

**Letter of Findings: 01-20200064  
Indiana 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 was not liable for additional Indiana income tax for the 2016 year because he demonstrated that he was insolvent immediately before receiving 1099-C income.

### ISSUE

#### **I. Indiana Individual Income Tax - Exclusions - Insolvency.**

**Authority:** I.R.C. § 61; I.R.C. § 108; IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; *Gitlitz v. Comm'r*, 531 U.S. 206 (2001); *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).

Taxpayer protests the Department's assessment of individual income tax for 2016.

### STATEMENT OF FACTS

Taxpayer is an Indiana resident. Taxpayer was audited by the Internal Revenue Service (the "IRS"). The IRS determined that Taxpayer failed to report additional income he received attributable to 1099-C income - cancellation of debt - during 2016. The IRS informed the Indiana Department of Revenue ("Department") that IRS audit determined Taxpayer had additional federal adjusted gross income, which in turn resulted in an additional Indiana income tax, penalty, and interest for 2016.

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

#### **I. Indiana Individual Income Tax - Exclusions - Insolvency.**

### DISCUSSION

Based on the IRS information, the Department assessed Taxpayer additional income tax, penalty, and interest for 2016. Taxpayer disagreed, arguing that the 1099-C income was excluded and not subject to Indiana income tax because he was insolvent immediately before the cancellation of his debt. Thus, the issue is whether Taxpayer demonstrated that he was insolvent immediately before his creditor cancelled his debt and therefore the income attributable to cancellation of debt (1099-C income) was exempt from Indiana income tax.

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); *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). Thus, 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).

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). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that a taxpayer files his or her federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently compute what is considered the taxpayer's Indiana income tax, the Indiana statute refers to 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 his or her Indiana income tax after applying certain additions and subtractions to that starting point, with modifications thereafter. Modifications to a resident taxpayer's adjusted gross income are outlined in IC § 6-3-1-3.5(a).

While IC § 6-3-1-3.5(a) mandates certain income to be added back to a taxpayer's adjusted gross income, it also allows certain income to be subtracted from the taxpayer's adjusted gross income. For instance, IC § 6-3-1-3.5(a)(1) specifically provides, "Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States." One example is "discharge of indebtedness," which generally gives rise to gross income to a debtor-taxpayer under I.R.C. § 61(a)(12); see *Gitlitz v. Comm'r*, 531 U.S. 206, 213 (2001). Nonetheless, I.R.C. § 108 provides exceptions to this general rule.

In this instance, Taxpayer stated that he provided additional documentation challenging the IRS determination in the U.S. Tax Court on the ground he was insolvent during 2016. Subsequently, the IRS reviewed the additional information and agreed with Taxpayer that the income attributable to cancellation of his debt in 2016 was not subject to income tax because he was insolvent. As such, the U.S. Tax Court dismissed the case based on a Joint Status Report filed by both Taxpayer and IRS.

Based on the information provided, the Department is prepared to agree that Taxpayer met his burden demonstrating that the income in question was not subject to Indiana income tax.

#### **FINDING**

Taxpayer's protest is sustained.

October 27, 2020

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