DEPARTMENT OF STATE REVENUE

01-20210100R.LOF

Letter of Findings: 01-20210100R
Individual Income Tax
For the Year 2020

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department agreed that Individuals presented evidence establishing that they had a North Carolina domicile in 2020. Individuals provided documentation of a house purchase and rental agreements, corrected W-2's from employers located outside Indiana, and tax returns reflecting Individuals' North Carolina address.

ISSUE

I. 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; *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); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); 45 IAC 3.1-1-21; 45 IAC 3.1-1-23.

Taxpayers argue that the Department of Revenue erred in denying them a refund of Indiana income tax withheld on their behalf on the ground that they are out-of-state residents receiving their income from employers outside Indiana.

STATEMENT OF FACTS

Taxpayers are individuals who now live in North Carolina. Taxpayers filed an Indiana income tax return (IT-40PNR) for the year 2020. On that return, Taxpayers reported zero Indiana adjusted gross income tax and requested a refund of approximately $500.

The Indiana Department of Revenue ("Department") responded in an "Important Taxpayer Notification" indicating that Taxpayers' return exhibited "inconsistencies." The Department found that Taxpayers had received approximately $18,000 in Indiana adjusted gross income from an out-of-state employer and imposed Indiana tax on that amount. The result was that Taxpayers were assessed Indiana income tax and denied the originally requested $500 refund.

Taxpayers did not agree with the Department's analysis and conclusion. Taxpayers submitted a protest to that effect. In their protest submission, Taxpayers indicated that they sought a "Final determination without a hearing." Subsequently, Taxpayers provided additional documentation. This Letter of Findings results from a review of the documentation provided.

I. Individual Income Tax - Indiana Source Income.

DISCUSSION

The issue is whether Taxpayers have met their burden of establishing that they did not receive income taxable to the state of Indiana during 2020 and that the Department's denial of their refund request was wrong.

Taxpayers explain that they were "permanent residents of North Carolina . . . since December 5, 2019" and that their Texas employer "incorrectly reported wages and withholdings" to Indiana.

In this instance, Taxpayers' protest stems from the Department's assessment of additional individual income tax along with the denial of their originally claimed refund. As a threshold issue, all such 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). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong.

Indiana imposes a tax "upon 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. Thus, to efficiently and effectively compute what is considered the taxpayers' 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 taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, 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; *see also* 45 IAC 3.1-1-21. Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

45 IAC 3.1-1-23 explains further how "residency" affects a taxpayer's income tax liability, in relevant part, as follows:

> (2) Taxpayer Moving from Indiana
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> Any person who, on or before the last day of the taxable year, changes his residence or domicile from Indiana to a place without Indiana, with the intent of abiding permanently without Indiana, is subject to adjusted gross income tax on all taxable income earned while an Indiana resident. Indiana will not tax income of a taxpayer who moves from Indiana and becomes an actual domiciliary of another state or country except that income received from Indiana sources will continue to be taxable.
> . . .
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> (4) Part-Time Resident Individuals
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> Persons residing in Indiana but living part of the year in other states or countries will be deemed residents of Indiana unless it can be shown that the abode in the other state or country is of a permanent nature. Domicile is not changed by removal therefrom for a definite period or for a particular purpose. A domicile, once obtained, continues until a new one is acquired . . . .

Taxpayers argue that the facts, circumstances, and the documentation provided the Department establish that Taxpayers took positive action to abandon their Indiana domicile and establish a North Carolina residency during 2019.

In order to buttress their claim that they are permanent residents of North Carolina Taxpayers provided a copy of both their 2019 and 2020 Federal and Indiana tax returns which list North Carolina as their residence, an earnings statement from their Texas employer listing Taxpayers' North Carolina address, and various utility bills under Taxpayers' North Carolina address.

However even as North Carolina residents, Indiana imposes its income "upon 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). In this case, Taxpayers have established that their Texas employer mistakenly withheld Indiana taxes on their behalf and have presented sufficient documentation - including corrected W-2s - verifying that they were receiving income from a Texas employer while residents of North Carolina.

The proposed assessment and refund denial will be set aside because Taxpayers presented substantial evidence contradicting the Department's determination that they were either Indiana residents during 2020 or that they received income from Indiana sources that year.

FINDING

Taxpayers' protest is sustained.

June 29, 2021

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An html version of this document.