

DEPARTMENT OF STATE REVENUE

01-20221463.LOF

**LETTER OF FINDINGS: 01-20221463
Individual Indiana Income Tax
For the Year 2018**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 has not met the burden of proving that the Department's assessment was incorrect.

ISSUE**I. Indiana Individual Income Tax - Federal Discrepancy.**

Authority: IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-8.1-5-1; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 15-5-1](#); [45 IAC 15-11-2](#).

Taxpayer argued that the Department's assessment of additional 2018 income tax was incorrect.

STATEMENT OF FACTS

Taxpayer is an Indiana resident. Taxpayer underreported his federal adjusted gross income by approximately \$8,500. An adjustment was made to Taxpayer's federal return, which prompted a review of his Indiana tax return. The Indiana Department of Revenue's (Department) review resulted in a proposed assessment of additional 2018 Indiana income tax.

Taxpayer disagreed with the assessment and submitted a protest to that effect. Taxpayer requested an administrative hearing. This Letter of Findings results. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Federal Discrepancy.**DISCUSSION**

Taxpayer stated in his protest that he agreed to the adjustment due to the additional income on his 2018 return. However, he stated he was not able to determine from the assessment how the tax balance was reached. Taxpayer additionally requested that penalty be waived. Taxpayer did not protest the imposition of interest.

As a threshold issue, it is the taxpayer's responsibility to establish that the existing tax assessment is incorrect. A proposed assessment is prima facie evidence that DOR's claim for the unpaid tax is valid. IC § 6-8.1-5-1(c). The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. *Id.*; See e.g., *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012) and *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.

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(b). IC § 6-3-1-3.5(a) provides the starting point in determining the taxpayer's taxable income and calculate what would be their Indiana

income tax after applying any particular additions and subtractions. The statute provides in part that Indiana adjusted gross income starts with "adjusted gross income" (as defined in Section 62 of the Internal Revenue Code) . . ." *Id.*

IC § 6-8.1-5-1(b), mandates that "[i]f the department reasonably believes that a person has not reported the proper amount of tax due, the department *shall make* a proposed assessment of the amount of the unpaid tax on the basis of the best information available." (*Emphasis added*) See also [45 IAC 15-5-1](#).

Due to the approximately \$8,500 federal adjustment, the Department explained in its assessment that Taxpayer had a tax balance of approximately \$8,000, a credit of \$7,550 (the amount Taxpayer remitted with his original return), plus penalties and interest. This calculation led to a balance due of approximately \$550.

As stated, Taxpayer reasoned that he was unable to understand how the Department calculated the proposed assessment. In support of the protest, Taxpayer provided copies of his federal and Indiana tax returns along with other tax forms and financial statements.

A review of the federal transcript provided to the Department by Taxpayer indicated that he reported - and the IRS adjusted - the federal adjusted gross income (AGI) amount on his 2018 federal return. The Department then adjusted the amount of federal AGI on the originally reported approximately \$191,000 to approximately \$199,500 on Taxpayer's Indiana return.

Using the adjusted Federal AGI, the Department adjusted Taxpayer's Indiana AGI from approximately \$144,000 to approximately \$152,500. The adjusted Indiana AGI then led to further adjustments of Taxpayer's state AGI tax and county tax. This left Taxpayer with a tax balance of approximately \$8,000.

Subsequently, Taxpayer was assessed both penalty and interest which added approximately \$100 to his balance. Taxpayer had a tax credit of \$7,550. This left Taxpayer with a final balance of approximately \$550.

Furthermore, Taxpayer protests the imposition of penalty. Taxpayer does not protest the imposition of interest, as Taxpayer is aware that interest cannot be waived. IC § 6-8.1-10-1(e) states that "the department may not waive the interest imposed under this section." The Department is not permitted to abate or refund interest charges.

Regarding penalty, IC § 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. IC § 6-8.1-10-2.1(a)(2) requires a ten-percent penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment."

Nevertheless, the law allows for the affected taxpayer to ask for, and the Department the authority to allow, abatement of the penalty.

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty."

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." *Id.*

Following a review of both the Indiana and federal documents, the Department correctly calculated its assessment. However, after review of the Department's records, the Department will waive the ten percent penalty, as allowed under IC § 6-8.1-10-2.1(d). Taxpayer has a history of compliance with the Department. The Department takes this opportunity to note that, now that Taxpayer is aware of the proper filing requirements, and such a waiver may not be available in the future.

FINDING

Taxpayer's protest is partially sustained and partially denied. The Department correctly imposed additional income tax. The Department will waive the penalty.

February 9, 2023

