

**Letter of Findings: 01-20221050**  
**Indiana Individual Income Tax**  
**for the Year 2019**

**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 Letter of Findings.

**HOLDING**

The Department erred in adding back, and subjecting to Indiana income tax, retirement income attributable to Arkansas Retiree.

**ISSUE**

**I. Indiana Individual Income Tax - Income Received by Out-of-State retiree.**

**Authority:** IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; [45 IAC 3.1-1-7](#); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *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); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-7](#); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#).

Taxpayers' representatives argued that the Department erred in issuing an assessment of additional 2019 Indiana income tax because Taxpayers' representatives explained that a portion of Taxpayers' reported income should have been sourced to Arkansas.

**STATEMENT OF FACTS**

Husband and wife Taxpayers are former Indiana residents. One Taxpayer currently resides in Indiana while the other Taxpayer resided in Arkansas. Both Taxpayers are or were residents in long-term health facilities in their respective states. Taxpayers filed a 2019 joint IT-40 "Indiana Full-Year Resident Return". The Arkansas resident Taxpayer passed away in 2020.

The Indiana Department of Revenue ("Department") reviewed the 2019 return. After doing so, the Department mailed Taxpayers an "Important Taxpayer Notification." The Notification contained a "line-by-line" breakdown of adjustments made to that return. The Notification stated that Taxpayers' IT-40, Line 4, with respect to Schedule 2 deductions was being changed from approximately \$77,000 to approximately \$31,000.

The change in deductions resulted in an additional assessment of approximately \$2,200 an amount which includes tax, interest, and penalty.

Taxpayers' respective representatives contacted the Department protesting the assessment. The Arkansas Taxpayer's representative argued that the Department erred in "adding back" Arkansas Resident's retirement income. An administrative hearing was conducted during which Taxpayers' representatives explained the basis for the protest. This Letter of Findings results.

**I. Indiana Individual Income Tax - Income Received by Out-of-State retiree.**

**DISCUSSION**

The issue is whether Taxpayers' representatives have met their burden of establishing that the Department erred in assessing Taxpayers additional 2019 Indiana income tax.

In the protest letter, Arkansas Taxpayer's representative explained:

Without explanation, the Department adjusted Schedule 2 of the Taxpayers' Form IT-40 by arbitrarily removing the [\$46,000] amount reported for [Arkansas Resident's] separate, nontaxable Arkansas income on

line 11a. This is an error because when [Arkansas Resident] died, he was a resident of the state of Arkansas. As such, he filed a 2019 Individual Income Tax Return or Form AR1000NR, a copy of which is enclosed.

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). In meeting that burden, the taxpayer is required to provide documentation explaining and supporting the 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, 486n.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 defines what is income derived from Indiana sources and subject to Indiana income tax. To compute what is considered a taxpayers' taxable 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 their Indiana income tax after applying any particular additions and subtractions.

IC § 6-3-2-2(a) provides in part:

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;
- (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. (*Emphasis added*).

Arkansas Taxpayer received various forms of income during 2019. The income consisted of annuity, retirement, investment, life insurance, and trust income. That income was received from institutions located in various states including Indiana. The individual 2019 1099R and 1099-DIV forms indicated the Arkansas Taxpayer had an Indiana address.

[45 IAC 3.1-1-7\(2\)](#) explains that certain retirement income is not subject to Indiana's income tax. The provision provides as follows:

Income from a pension, annuity, profit-sharing, or stock-option plan that meets the qualifications of the Internal Revenue Code is taxed by the state of legal residence. Lump sum distributions from qualified plans are taxed by the state which, at the time of the distribution, is the taxpayer's legal residence. Whether a plan meets the qualifications of the Internal Revenue Code is determined by the Internal Revenue Service.

The federal "qualifications" are found at 4 U.S.C. § 114 which provides:

- (a) No State may impose an income tax on any retirement income of an individual who is not a resident or domiciliary of such State (as determined under the laws of such State).
- (b) For purposes of this section—
  - (1) The term "retirement income" means any income from—
    - (A) a qualified trust under section 401(a) of the Internal Revenue Code of 1986 that is exempt under section 501(a) from taxation;
    - (B) a simplified employee pension as defined in section 408(k) of such Code;
    - (C) an annuity plan described in section 403(a) of such Code;
    - (D) an annuity contract described in section 403(b) of such Code;
    - (E) an individual retirement plan described in section 7701(a)(37) of such Code;
    - (F) an eligible deferred compensation plan (as defined in section 457 of such Code);
    - (G) a governmental plan (as defined in section 414(d) of such Code);
    - (H) a trust described in section 501(c)(18) of such Code; or
    - (I) any plan, program, or arrangement described in section 3121(v)(2)(C) of such Code (or any plan,

program, or arrangement that is in writing, that provides for retirement payments in recognition of prior service to be made to a retired partner, and that is in effect immediately before retirement begins), if such income—

- (i) is part of a series of substantially equal periodic payments (not less frequently than annually which may include income described in subparagraphs (A) through (H)) made for—
  - (I) the life or life expectancy of the recipient (or the joint lives or joint life expectancies of the recipient and the designated beneficiary of the recipient), or
  - (II) a period of not less than 10 years, or
- (ii) is a payment received after termination of employment and under a plan, program, or arrangement (to which such employment relates) maintained solely for the purpose of providing retirement benefits for employees in excess of the limitations imposed by 1 or more of sections 401(a)(17), 401(k), 401(m), 402(g), 403(b), 408(k), or 415 of such Code or any other limitation on contributions or benefits in such Code on plans to which any of such sections apply.

The fact that payments may be adjusted from time to time pursuant to such plan, program, or arrangement to limit total disbursements under a predetermined formula, or to provide cost of living or similar adjustments, will not cause the periodic payments provided under such plan, program, or arrangement to fail the "substantially equal periodic payments" test.

Such term includes any retired or retainer pay of a member or former member of a uniform service computed under chapter 71 of title 10, United States Code.

- (2) The term "income tax" has the meaning given such term by section 110 (c).
- (3) The term "State" includes any political subdivision of a State, the District of Columbia, and the possessions of the United States.
- (4) For purposes of this section, the term "retired partner" is an individual who is described as a partner in section 7701(a)(2) of the Internal Revenue Code of 1986 and who is retired under such individual's partnership agreement.
- (e) Nothing in this section shall be construed as having any effect on the application of section 514 of the Employee Retirement Income Security Act of 1974.

Taxpayers' representatives provided a copy of Arkansas Taxpayer's 2019 Arkansas "Individual Income Tax Return" intended for "nonresident and part year resident[s]" which was filed on behalf of Arkansas Taxpayer's surviving spouse - Indiana Taxpayer. On that return, Arkansas Taxpayer reported income - and paid tax - on the approximately \$46,000 in income the Department added back to the Indiana return.

In Arkansas Taxpayer's case, his representative provided information sufficient to conclude that income listed on the WH-18 is retirement income that Indiana is not permitted to tax under 4 U.S.C. § 114(b)(1)(I).

In addition, Arkansas Taxpayer's representatives presented specific information establishing that Arkansas Taxpayer was not an Indiana resident during 2019. As Indiana law explains, the term "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](#).

The Department has no ability to definitely determine Arkansas Taxpayer's "intent" at the time he was institutionalized at the Arkansas long-term health care facility. However, given the circumstances, it is reasonable to assume that he intended the arrangement to be permanent under the Department's regulation [45 IAC 3.1-1-22](#) which provides, in part, as follows:

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place . . . The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case.

Taxpayers' representatives have met their burden under IC § 6-8.1-5-1(c) of providing well-developed and cogent arguments and documentation establishing that the Departments income tax assessment was wrong. Arkansas Taxpayer, for all intents and purposes, was a resident of Arkansas during 2019 and that the law precludes Indiana from taxing the retirement income he received during that period.

### FINDING

Taxpayers' protest is sustained.

June 24, 2022

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An [html](#) version of this document.