DEPARTMENT OF STATE REVENUE

01-20221060.ODR

Final Order Denying Refund: 01-20221060
Individual Income Tax
for the Tax Year 2020

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 Order Denying Refund.

HOLDING

The Department's initial refund denial was correct. Husband's unemployment income needed to be added back to their federal adjusted gross income for Indiana income tax computations.

ISSUE

I. Income Tax - Refund.

Authority: IC § 6-8.1-5-1; IC § 6-3-1-3.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc*., 15 N.E.3d 579 (Ind. 2014); IRC § 85; Information Tax Bulletin 119 (May 2021).

Taxpayers protest the denial of refund.

STATEMENT OF FACTS

Taxpayers are a married couple ("Husband" and "Wife") who in 2020timely filed both their federal and Indiana tax returns jointly. The Indiana Department of Revenue ("Department") reviewed Taxpayers' Indiana return for 2020 and determined additional Indiana income tax was due.

In July 2021, Taxpayers received an assessment from the Department for additional income tax owed. In the letter accompanying the assessment, Taxpayers were not notified of their right to protest the assessment.

In August 2021, the Department notified Taxpayers of their right to protest the assessment and Taxpayers opted to do so. Wife attended the hearing to represent both Taxpayers. An administrative hearing was held and this Final Order Denying Refund results. Additional facts will be provided as necessary.

I. Income Tax - Refund.

DISCUSSION

As a result of the COVID-19 pandemic, Husband received unemployment income due to a furlough from his job in 2020. Taxpayers deducted the unemployment payments from their adjusted gross income on both their federal and Indiana tax returns following the provisions of the American Rescue Plan Act. After review, the Department determined the unemployment income was incorrectly excluded from Taxpayers' Indiana tax return. After adding back the unemployment payments, the Department determined Taxpayers owed additional taxes and issued an assessment. Taxpayers believed that the Department made a mistake, and that the assessment was not owed because the unemployment income had been incorrectly added back to Indiana adjusted gross income.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. 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); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

In response to the COVID-19 pandemic, the federal government passed a series of acts, including the American Rescue Plan Act. This Act made a special modification related to unemployment benefits received during the 2020 tax year under IRC § 85(c). The section was modified as follows:

> Special rule for 2020
> (1) In general
> In the case of any taxable year beginning in 2020, if the adjusted gross income of the taxpayer for such taxable year is less than $150,000, the gross income of such taxpayer shall not include so much of the unemployment compensation received by such taxpayer (or, in the case of a joint return, received by each spouse) as does not exceed $10,200.

Information Tax Bulletin 119 (May 2021), 20210602 Ind. Reg. 045210192NRA provides guidance on how Indiana dealt with the provisions in the COVID-19 response acts:

> Under IC 6-3-1-11, the definition of "Internal Revenue Code" is established as of a specific date. Prior to the 2021 session of the Indiana General Assembly, IC 6-3-1-11 defined "Internal Revenue Code" as the version in effect on Jan. 1, 2020. During the 2021 session, the Indiana General Assembly enacted a revised definition of "Internal Revenue Code" to include various items from which a tax provision that is enacted outside the Internal Revenue Code. Further, the definition of Internal Revenue Code was updated to March 31, 2021.
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> Because legislation is commonly enacted after the specified date but prior to when the Indiana General Assembly reconvenes each year, modifications made to the Internal Revenue Code after the specified date are not captured by Indiana. Further, these modifications are not listed in IC 6-3 or IC 6-5.5, so the modifications may not be readily apparent.
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> Section 9042 of the American Rescue Plan Act of 2021 enacted IRC § 85(c). This provision created a $10,200 per individual exclusion for unemployment compensation, provided that the taxpayer had adjusted gross income of less than $150,000.
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> Pursuant to IC 6-3-1-3.5(a)(33) as enacted by HEA 1436-2021, **Indiana does not follow the exclusion permitted under IRC § 85(c)**. Accordingly, the amount of unemployment compensation otherwise excluded **must be added back** into Indiana adjusted gross income.
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> For purposes of IC 6-3-2-10, the deduction under that section is permitted based on the full amount of unemployment compensation, regardless of the federal exclusion. However, for purposes of computing the deduction, federal adjusted gross income on which the unemployment deduction is based **must be increased by the amount of unemployment compensation excluded for federal income tax purposes. (Emphasis added.)**

In the present case, Taxpayers' gross adjusted income was not more than $150,000. Therefore, Taxpayers correctly excluded the unemployment income received from their federal adjusted gross income under IRC § 85(c) as provided by the American Rescue Plan Act. However, Indiana decoupled from IRC § 85(c) and does not allow for unemployment income to be excluded. For the purposes of filing Indiana taxes, Husband's unemployment income must be added back under IC § 6-3-1-3.5(a)(33).

A review of the Department's records shows that Taxpayers did not add back Husband's unemployment income to their Indiana adjusted gross income when they filed their tax return in 2020. As a result, the Department added the unemployment amount back and issued an assessment of additional tax. The Department's actions followed IC § 6-3-1-3.5(a)(33) and correctly added back the unemployment payments at issue.

FINDING

Taxpayers' protest is denied.

July 29, 2022

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