

Letter of Findings: 01-20221049
Individual Income Tax
for Tax 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 Indiana Department of Revenue'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 This document is effective on its date of publication and remains in effect until the date is superseded or deleted by the publication of another document in the Indiana Register.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's payment from former employer was Indiana source income and therefore subject to Indiana adjusted gross income tax.

ISSUE

I. Individual Income Tax - Indiana Source Income.

Authority: IC § 6-3-2-1; IC § 6-8.1-5-1; *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, Ind. 2014); [45 IAC 3.1-1-2](#); [45 IAC 3.1-1-7](#); [45 IAC 3.1-1-23](#); Income Tax Information Bulletin 28 (November 2016).

Taxpayer protests the proposed assessment of adjusted income.

STATEMENT OF FACTS

Taxpayer is a current resident of Germany, but previously worked and resided in Indiana. The Indiana Department of Revenue ("Department") issued a notice to Taxpayer informing him that inconsistencies were identified on his Form IT-40PNR (Part-Year or Full-Year Nonresident Individual Income Tax Return) for tax year 2020. The Department's notice stated that adjustments were made to Taxpayer's Form IT-40PNR to reflect Indiana income reported on Taxpayer's W-2s and an assessment was owed.

Taxpayer protested the assessment. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Letter of Finding results. Additional facts will be provided as necessary.

I. Individual Income Tax - Indiana Source Income.

DISCUSSION

Taxpayer was an Indiana resident and employed by an Indiana company until October 2019 when he moved to Germany. Taxpayer currently resides in Germany and has lived there since October 2019. In 2020, Taxpayer received a payment from his former Indiana employer that consisted of accrued vacation time and a single bonus payment based on company-wide profitability for the year ending December 31, 2019. The Indiana company remitted payment to Taxpayer after he moved to Germany. Taxpayer argues that Indiana income tax is not due on the payment because he was not a resident of Indiana at the time the payment was made.

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 an adjusted gross income tax "on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). Indiana source income is defined at [45 IAC 3.1-1-2\(1\)](#) as "compensation for services, including fees, commissions and similar items. [45 IAC 3.1-1-7\(4\)](#) states that "accumulated vacation, bonus, severance and sick pay is directly attributable to services performed and is taxed by the state where the services were performed." See also [45 IAC 3.1-1-23\(2\)](#).

Income Tax Bulletin 28 (November 2016) 20161228 Ind. Reg. 045160560 NRA, which was in effect at the time the payment occurred, states "[d]eferred compensation other than from a qualified retirement plan, **accumulated vacation, bonus, severance, sick pay, or income from a stock option plan are directly attributable to services performed and are taxable by the state where the services were performed.**" (Emphasis added.)

Taxpayer received a payment in 2020 for accrued vacation time and a bonus tied to his employment with an Indiana company. Per [45 IAC 3.1-1-7\(4\)](#) and Income Tax Bulletin 28, vacation and bonus pay are attributable to services performed and taxed by the state where the services were performed. Taxpayer's residency in Germany at the time he received payment does not relieve him from the requirement to pay income tax to Indiana for this Indiana source income. Therefore, Taxpayer has not met the burden of proving the proposed assessment wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

August 12, 2022

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