

**Letter of Findings: 01-20221099**  
**Indiana Individual Income Tax**  
**for the Tax Year 2021**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Indiana Residents were permitted to claim the "Unified Tax Credit for the Elderly" on their IT-40 Indiana income tax return; there was no requirement that they claim the credit exclusively by means of Indiana's form SC-40.

**ISSUE**

**I. Indiana Individual Income Tax - Unified Tax Credit for the Elderly.**

**Authority:** IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-3-9; IC § 6-8.1-5-1; *New Colonial Ice Co. v. Helvering*, 292 U.S. 435 (1934); *United States v. McFerrin*, 570 F.3d 672 (5th Cir. 2009); *Stinson Estate v. United States*, 214 F.3d 846 (7th Cir. 2000); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Conklin v. Town of Cambridge City*, 58 Ind. 130 (1877); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); Income Tax Information Bulletin 26 (July 2015).

Taxpayers protest the Department's assessment of 2021 individual income tax.

**STATEMENT OF FACTS**

Taxpayers are Indiana residents who filed a return and paid Indiana income tax. Taxpayers submitted Indiana's IT-40, "Indiana Full-Year Resident Individual Income Tax Return," reporting their 2021 Indiana income. The Indiana Department of Revenue ("Department") responded in a letter dated June 6, 2022, stating as follows:

Immediate Action Required: A review of your Indiana Individual Income tax for the tax period ending December 31, 2021, indicates you owe an additional \$220.76. This amount represents the full liability due including all assessed penalties and interest to date. Details of this amount and the reasons for the assessment are listed below . . . .

The Department's June 6 letter explained that Taxpayers owed approximately \$200 in additional tax along with interest and penalty charges.

Taxpayers disagreed with the assessment and submitted a protest to that effect. Taxpayers argued that the Department erred in denying them the benefit of the "Unified Credit for the Elderly." In their protest letter, Taxpayers asked that the Department issue a "[f]inal determination without a hearing." The Department reviewed Taxpayers' protest and this Letter of Findings results.

**I. Indiana Individual Income Tax - Unified Tax Credit for the Elderly.**

**DISCUSSION**

As stipulated by Taxpayers, the only issue is whether Taxpayers were entitled to claim the Unified Tax Credit for the Elderly ("Unified Credit") and that the Department's assessment of additional 2021 income tax was wrong.

A tax assessment, such as the one challenged here by Taxpayers, constitutes *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, 486 n.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(b). 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.

In this particular case, Taxpayers maintain that they were entitled to claim the Unified Credit. The Unified Credit is found at IC § 6-3-3-9 which provides in small part:

- (a) The credit provided by this section shall be known as the unified tax credit for the elderly.
- (b) As used in this section, unless the context clearly indicates otherwise:
  - (1) "Household federal adjusted gross income" means the total adjusted gross income, as defined in Section 62 of the Internal Revenue Code, of an individual, or of an individual and his spouse if they reside together for the taxable year for which the credit provided by this section is claimed.
  - (2) "Household" means a claimant or, if applicable, a claimant and his or her spouse if the spouse resides with the claimant and "household income" means the income of the claimant or, if applicable, the combined income of the claimant and his or her spouse if the spouse resides with the claimant.
  - (3) "Claimant" means an individual, other than an individual described in subsection (c) of this section, who:
    - (A) has filed a claim under this section;
    - (B) was a resident of this state for at least six (6) months during the taxable year for which he or she has filed a claim under this section; and
    - (C) was sixty-five (65) years of age during some portion of the taxable year for which he has filed a claim under this section or whose spouse was either sixty-five (65) years of age or over during the taxable year.
- (c) The credit provided under this section shall not apply to an individual who, for a period of at least one hundred eighty (180) days during the taxable year for which he has filed a claim under this section, was incarcerated in a local, state, or federal correctional institution.
- (d) The right to file a claim under this section shall be personal to the claimant and shall not survive his death, except that a surviving spouse of a claimant is entitled to claim the credit provided by this section. For purposes of determining the amount of the credit a surviving spouse is entitled to claim under this section, the deceased spouse shall be treated as having been alive on the last day of the taxable year in which the deceased spouse died. When a claimant dies after having filed a timely claim, the amount thereof shall be disbursed to another member of the household as determined by the commissioner. If the claimant was the only member of his household, the claim may be paid to his executor or administrator, but if neither is appointed and qualified within two (2) years of the filing of the claim, the amount of the claim shall escheat to the state.
- (e) For each taxable year, subject to the limitations provided in this section, one (1) claimant per household may claim, as a credit against Indiana adjusted gross income taxes otherwise due, the credit provided by this section. If the allowable amount of the claim exceeds the income taxes otherwise due on the claimant's household income or if there are no Indiana income taxes due on such income, the amount of the claim not used as an offset against income taxes after audit by the department, at the taxpayer's option, shall be refunded to the claimant or taken as a credit against such taxpayer's income tax liability subsequently due.
- (f) The amount of any claim otherwise payable under this section may be applied by the department against any liability outstanding on the books of the department against the claimant, or against any other individual who was a member of his household in the taxable year to which the claim relates.
- (g) The amount of a claim filed pursuant to this section by a claimant that either
  - (i) does not reside with his spouse during the taxable year, or
  - (ii) resides with his spouse during the taxable year and only one (1) of them is sixty-five (65) years of age or older at the end of the taxable year, shall be determined in accordance with the following schedule:

The Unified Credit is set out in the statute, but the Department is charged with the responsibility of administering it. IC § 6-3-3-9(i) states that "[t]he department may promulgate reasonable rules under [IC 4-22-2](#) for the administration of this section."

The Department did just that by issuing Income Tax Information Bulletin 26 (July 2015), 20150826 Ind. Reg. 045150278NRA. That Bulletin provides:

An individual is eligible for the Unified Tax Credit for the Elderly if the individual meets all of the following requirements:

1. The taxpayer and/or spouse must be at least 65 by the end of the taxable year.
2. The taxpayer and spouse must file a joint return if they lived together at any time during the taxable year.
3. The federal adjusted gross income must be less than \$10,000.
4. The qualifying taxpayer and/or spouse must have been a resident of Indiana at least six months during the taxable year.

....

This credit can be claimed on the IT-40 or the IT-40PNR. If the income is below the limits that require the filing of an income tax return but the taxpayer and/or spouse meets the qualifications to claim the credit, the *credit can be claimed by filing Form SC-40 no later than June 30 following the close of the taxable year*. The credit cannot be claimed on behalf of a decedent unless the claim is filed by the surviving spouse on a joint return. If an individual is imprisoned for more than 180 days during the taxable year, the individual is not eligible for the credit. (*Emphasis added*).

In addressing Taxpayers' claim to the Unified Credit, the Department bears in mind how such credits are treated. Where a credit is claimed, "[T]he party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Indiana Dep't. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 100-01 (Ind. Ct. App. 1974) (citing *Conklin v. Town of Cambridge City*, 58 Ind. 130, 133 (1877)). Citing *Stinson Estate v. United States*, 214 F.3d 846, 848 (7th Cir. 2000), the circuit court in *United States v. McFerrin* summarized that "[t]ax credits are a matter of legislative grace, are only allowed as clearly provided for by statute, and are narrowly construed." *United States v. McFerrin*, 570 F.3d 672, 675 (5th Cir. 2009). See also *New Colonial Ice Co. v. Helvering*, 292 US. 435, 440 (1934) ("Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed.")

Taxpayers explained that they utilized the "Free Tax USA" tax service to file their IT-40. According to Taxpayers, this service provider "couldn't find any reason why [they] didn't qualify for this tax credit . . ." According to Taxpayers, they meet all the necessary requirements, they are both "in our 90's," they filed a joint return, they claimed the credit before June 30th, are both Indiana residents, their income was under \$10,000, and were "both residents of Indiana for over 70 years."

Taxpayers are correct in that they apparently meet the IC § 6-3-3-9 qualifications as explained in Income Tax Information Bulletin 26 (July 2015). Their income is below the \$10,000 threshold, and Taxpayers had the *option* of claiming the credit by means of the "Form SC-40" filed no later than June 30 following the close of the taxable year." Taxpayers did not file the Form SC-40; instead, they filed the IT-40.

As indicated above, Taxpayers bear the burden under IC § 6-8.1-5-1 of establishing that the assessment was wrong, and the Department has the responsibility of reviewing a claim for any credit to assure that the claim is "clearly within the exact letter of the law." *RCA Corp.*, 310 N.E.2d at 100-01. (Ind. Ct. App. 1974). The Department finds no reason to conclude that the only route to claim the Unified Credit is by means of the SC-40. To the extent that the Department denied the credit on the ground that they were required to file the SC-40, Taxpayers' protest is sustained.

## FINDING

Taxpayers' is sustained to the extent described in this Letter of Findings.

August 11, 2022

Posted: 05/17/2023 by Legislative Services Agency  
An [html](#) version of this document.