

**Letter of Findings: 01-20221249**  
**Individual Income Tax**  
**for the 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 (the "Department") 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 was responsible for the additional assessed base tax and accompanying interest related to the failure to include cancelled debt in her adjusted gross income. The Department agrees to waive the penalty considering her reliance on professional advice.

**ISSUE**

**I. Individual Income Tax - Assessment.**

**Authority:** IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; *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); 26 USC § 61; 26 USC § 108.

Taxpayer protests the Department's assessment of additional individual income tax.

**II. Tax Administration - Penalty.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the Department's assessment of penalty.

**STATEMENT OF FACTS**

Taxpayer is an Indiana resident. The Indiana Department of Revenue ("Department") learned that Taxpayer had additional income for 2018 and issued a proposed assessment for additional income tax. Taxpayer protests the assessment of additional individual income tax. An administrative hearing was held. This Letter of Findings results. Additional facts will be provided as necessary.

**I. Individual Income Tax - Assessment.**

**DISCUSSION**

The Department determined Taxpayer owed additional income tax after receiving information that her adjusted gross income was underreported and reviewing her 2018 Indiana tax return.

In 2015, Taxpayer considered filing for bankruptcy and discussed the matter with an attorney. Taxpayer explained that the attorney advised her that, if she did not pay her credit card bill for seven years, any remaining credit card debt would be discharged. Taxpayer followed the attorney's advice and did not pay monies owed on a credit card; however, she never filed for bankruptcy. Due to Taxpayer's failure to pay, the credit card company issued Taxpayer Form 1099-C for tax year 2018. This cancelled Taxpayer's remaining debt of approximately \$14,000.

Taxpayer filed an Indiana Individual tax return in 2018 and did not include the cancelled debt in her adjusted gross income. After receiving information that Taxpayer's federal adjusted gross income was understated, the Department conducted a review of Taxpayer's account and issued an assessment for additional income tax.

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 the Department's claim for the unpaid tax is valid. IC § 6-8.1-5-1(c). The burden of proving 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). 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).

Indiana imposes a tax "upon 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) outlines what is income derived from Indiana sources and subject to Indiana income tax. There is a presumption that a taxpayer files his/her federal income tax return as required by the Internal Revenue Code. Thus, to effectively compute what is considered a taxpayer's Indiana income tax, Indiana law refers to the Internal Revenue Code. IC § 6-3-1-3.5 provides a starting point in determining a taxpayer's taxable income and calculating what would be his/her Indiana income tax after applying certain additions and subtractions, with any necessary modifications following. Modifications are outlined in IC § 6-3-1-3.5(a).

IC § 6-3-1-3.5 mandates certain income be added back to a taxpayer's adjusted gross income. This same section also allows certain income to be subtracted from a taxpayer's adjusted gross income. Under IC § 6-3-1-3.5(a)(1), income that is exempt from taxation under this article by statutes of the United States is subtracted from adjusted gross income. Generally, under 26 USC § 61(a)(11) income from the discharge of indebtedness is included in a taxpayer's gross income. Some exceptions exist to including cancelled debt in adjusted gross income, such as the discharge of debt related to a qualified principal residence, see e.g. 26 USC § 108(a)(1)(E); however, there is no exclusion for debt related to nonpayment of credit card debt.

Taxpayer participated in an administrative hearing and explained what happened and why she received Form 1099-C. She also provided a copy of Form 1099-C issued by the credit card company and a copy of her federal Record of Accounts for tax year 2018.

A review of Taxpayer's federal account transcript shows that for 2018, she had approximately \$14,000 of additional income subject to Indiana and county income tax that was not reported on her Indiana return. Taxpayer did not file an amended return to report the federal adjustment. Thus, pursuant to IC § 6-8.1-5-1(c), the Department's assessment is correct.

## FINDING

Taxpayer's protest is denied.

### II. Tax Administration - Penalty.

An assessment is considered a tax payment which, if not made by the due date, accrues penalty and interest. IC § 6-8.1-5-1(b). Interest accrues via a statutorily described rate, and the Department may not waive interest imposed. IC § 6-8.1-10-1(c) and (e). In addition to interest, the Department may also impose a ten percent penalty under IC § 6-8.1-10-2.1(b). However, if the person can show the failure to file a return was due to reasonable cause and not due to willful neglect, the penalty can be waived by the Department. IC § 6-8.1-10-2.1(d).

Reasonable cause is defined by [45 IAC 15-11-2\(b\)](#) as:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case-by-case basis according to the facts and circumstances of each taxpayer.

Taxpayer indicated that when she considered filing for bankruptcy in 2015, she sought advice from an attorney. The attorney informed her that if she did not pay her credit card bills for seven years, the debt would "go away." Because Taxpayer relied on professional advice and has a history of timely filing tax returns, the Department will

waive the assessed penalty. As previously mentioned, the Department cannot waive accrued interest per IC § 6-8.1-10-1(e).

Finally, the Department's Notice of Proposed Assessment shows \$58.00 added to the total due as "Other." A review of Taxpayer's account shows that under her originally filed 2018 Indiana tax return she was owed a refund of \$58.00. After the adjustments related to the cancelled debt income, Taxpayer is no longer entitled to this refund and instead owes additional taxes. The Department adjusted Taxpayer's account to reflect that the previous refund of \$58.00 has been added back to the total amount due.

### **FINDING**

Taxpayer's protest is sustained in part and denied in part. Taxpayer is responsible for paying the additional assessed base tax and accrued interest. The Department will waive the assessed penalty.

### **SUMMARY**

Taxpayer is denied on Issue I regarding the imposition of additional income tax. Taxpayer is sustained on Issue II regarding the imposition of penalty.

September 8, 2022

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