

**Letter of Findings: 01-20221065
Indiana Individual Income Tax
For the Year 2018**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Couple protested the Indiana Department of Revenue's ("Department") proposed assessment of additional Indiana individual income tax for the year 2018; documentation shows that they correctly added-back an amount to their 2018 Indiana income tax return. Protest was denied in part regarding a remaining discrepancy.

ISSUE

I. Individual Income Tax - Proposed Assessment.

Authority: IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *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).

Taxpayers protest the proposed assessment of additional Indiana income tax for the year 2018.

STATEMENT OF FACTS

Taxpayers are a married couple that filed a joint Indiana tax return, IT-40, for the tax year 2018. As the result of the Indiana Department of Revenue ("Department") issuing a notice of proposed assessment for additional Indiana income tax owed for 2018, Taxpayers (via the husband) filed a Protest Submission Form ("Form") protesting the Department's proposed assessment. On the Form, Taxpayers checked the box indicating they wanted to pursue "Settlement without a hearing or a final determination." Settlement was not reached, so an administrative hearing was held. Additional facts will be provided as necessary below.

I. Individual Income Tax - Proposed Assessment.

DISCUSSION

The Department, in a letter dated December 16, 2021, stated that a "review of your Indiana Individual Income tax for the tax period ending December 31, 2018, indicates you owe an additional \$1,866.51." The "Explanation for this Assessment" states that the Department "had determined your reported federal adjusted gross income is understated" and that the Department "did not receive your full payment by the original due date" and that if an extension was received for the due date that the Department "either did not receive at least 90[percent] of expected tax due . . . or that tax that remained unpaid during the extension period was not paid by the extended due date." The Department's letter states in part "[a] penalty has been assessed for underpayment of quarterly estimated income tax payments." Also, the Department sent a letter on February 2, 2022, stating a different amount owed (\$1,007.50) for the same tax filing period of 2018. That letter gives no explanation of whether that amount is in addition to the prior proposed assessment or was lowering the proposed assessment for 2018.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *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). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "when [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 an adjusted gross income tax on all residents. IC § 6-3-2-1(a). Taxpayer's Indiana income is determined by starting with the federal adjusted gross income and making certain adjustments. IC § 6-3-1-3.5(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax.

Taxpayers state in their written protest that:

As you can see from my letter to the IRS, the disputed amount with them is \$31027.94 that was not deducted from my gross income. If you look at my state return, I added back this \$31027 to my state income, as instructed.

In a letter to the U.S. Department of Treasury, Taxpayers state:

You have made a mistake on my 2018 1040 tax return that has caused a problem on my Indiana State tax return. On my two 2018 form K-1's, I had a domestic production activities deduction (DPAD) of \$31027.94 . . .

During the telephone hearing, the husband stated that because a federal deduction was being disallowed, he added the amount back to their 2018 Indiana income tax. Taxpayers' 2018 Indiana income tax return shows that they added back "31028" on line two of the IT-40.

In the present case, the Department's two proposed assessments were not clear in explaining the rationale of the two proposed assessment notices. The issue appears to be whether Taxpayers added back the disallowed federal deduction. Taxpayers' documentation establishes that they added back the \$31,028 on their 2018 Indiana income tax return. Thus, on that specific issue Taxpayers have met their burden of proof regarding the Department's proposed assessment for 2018 (including any penalties related to add-back issue) as required under IC § 6-8.1-5-1(c). However, there is still a discrepancy of approximately \$3,800 between Taxpayers' 2018 Indiana income tax return and the federal information. Taxpayers did not address or explain that discrepancy in their protest or at the hearing, thus they did not meet their burden of proof regarding that issue. Therefore, Taxpayers are denied on this portion of their protest.

FINDING

Taxpayers' protest is sustained in part and denied in part. Regarding the add-back issue (and any penalties related to the add-back issue) Taxpayers are sustained. As noted, there is nonetheless still a discrepancy of approximately \$3,800 between what Taxpayers' Indiana 2018 return shows and what the federal information shows. Taxpayers are denied on this portion of their protest.

March 21, 2023

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