

**Letter of Findings: 01-20221726
Indiana Individual Income Tax
For The 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 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 resident was responsible for additional Indiana income tax attributable to unemployment compensation and statutory interest. Indiana resident, however, was not responsible for collection costs incurred in 2022.

ISSUE

I. Indiana Individual Income Tax - Burden of Proof.

Authority: IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-3; IC § 6-8.1-8-4; IC § 6-8.1-9-2; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Stinson Est. v. United States*, 214 F.3d 846 (7th Cir. 2000).

Taxpayer protests the proposed assessment of individual income tax for the 2020 tax year and statutory interest, the offset of her 2021 refund, and collection costs incurred in 2022.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who filed a 2020 Indiana Full-Year Resident Individual Income Tax Return and received an \$870 refund in 2021.

In late 2021, the Indiana Department of Revenue ("Department") determined that, during 2020, Taxpayer received approximately \$10,200 in unemployment compensation but she did not add it back in Line 2 of her 2020 Indiana return. The Department thus adjusted Taxpayer's filing and assessed Taxpayer additional income tax and interest. Nonetheless, the Department abated the penalty.

In 2022, the Department offset Taxpayer's \$137 refund request for 2021 and two Automatic Taxpayer Refunds (collectively, "Refund Offset"). The total \$462 Refund Offset was applied to Taxpayer's outstanding liability. Taxpayer's remaining outstanding balance was subsequently advanced to a tax warrant collection stage and collection costs were added to Taxpayer's outstanding balance. In September 2022, the Department expunged the tax warrant.

Taxpayer protested the assessment. An administrative hearing was held. Taxpayer was given additional time to provide additional documents to support her protest. Taxpayer failed to do so. This Letter of Findings ensues and is based on the documents initially submitted in protest and on information within the Department's records. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Burden of Proof.

DISCUSSION

The Department assessed additional tax for 2020 because Taxpayer received the unemployment compensation, but Taxpayer failed to report it on her 2020 Indiana income return, as statutorily required.

Taxpayer disagreed, claiming that she was not responsible for the additional income tax, interest, and collection costs. In addition, Taxpayer argued that the Department erred in offsetting her refund.

The issue is whether Taxpayer demonstrated that she was not responsible for additional Indiana income tax, interest, collection costs, and the Department erred in applying Refund Offset to the initial assessment.

Pursuant to IC § 6-8.1-5-1(b), if the Department "reasonably believes that a person has not reported the proper amount of tax due," the Department must "make a proposed assessment of the amount of the unpaid tax" plus applicable interest and penalties. All tax assessments are *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); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012).

Also, according to IC § 6-8.1-9-2(a), if the Department "finds that a person has paid more tax for a taxable year than is legally due, the department shall apply the amount of the excess against any amount of that same tax that is assessed and is currently due."

Additionally, "all statutes are presumptively constitutional." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 587 (Ind. 2014). "Internal Revenue Code provisions dealing with deductions, exemptions, and exclusions are matters of legislative grace." *Stinson Est. v. United States*, 214 F.3d 846, 848 (7th Cir. 2000). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Caterpillar, Inc.*, 15 N.E.3d at 583. Thus, the taxpayer is required to provide documentation explaining and supporting her 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).

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(a). To compute what is considered the resident/taxpayer's Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be his or her Indiana income tax after applying certain additions and subtractions to that starting point, with modifications thereafter.

One of the modifications, IC § 6-3-1-3.5(a)(33), specifically provides:

For taxable years beginning after December 31, 2019, and before January 1, 2021, **add an amount equal to the amount of unemployment compensation excluded from federal gross income** under Section 85(c) of the Internal Revenue Code. (**Emphasis added**).

Throughout the protest process, Taxpayer in this case stated that the "Unemployment should NOT be taxed" and that she "completed the waiver." Taxpayer further argued that it is unfair to tax her unemployment compensation and offset her refund. Taxpayer was given additional time to - but she did not - provide any documents to support and substantiate her protest.

The Department notes that in this instance, Taxpayer's argument that the government determined that unemployment compensation should not be taxed is only correct at the federal level. According to the Department's records, Taxpayer received the unemployment compensation during 2020. Pursuant to IC § 6-3-1-3.5(a)(33), Taxpayer was required to add back that income for Indiana income tax purposes. Taxpayer failed to do so. As a state agency, the Department is charged with enforcing the Indiana tax law. Thus, pursuant to IC § 6-8.1-5-1(b) and IC § 6-8.1-9-2(a), the Department properly issued the proposed assessment and applied the Refund Offset - "the amount of the excess against any amount of that same tax that is assessed and is currently due."

In addition, the Department is not unsympathetic to Taxpayer's financial situation. It should be noted that, upon a further review of the records, when the assessment in question was proposed, the Department considered several factors and abated the penalty as permitted under IC § 6-8.1-10-2.1. The Department has no statutory authority to waive interest, which is mandatory under IC § 6-8.1-10-1.

Finally, Taxpayer protested the collection costs which was subsequently imposed in 2022 under IC § 6-8.1-8-2, IC § 6-8.1-8-3, and IC § 6-8.1-8-4. According to the Department's records, Taxpayer's protest of the proposed assessment was determined to be timely. As such, the initial assessment should have not been advanced to a warrant collection stage. The collection costs thus were attributable to the Department's error. Taxpayer promptly contacted the Department, and the Department expunged the tax warrant in question as a result. Thus, Taxpayer is not responsible for the collection costs.

In short, Taxpayer is not responsible for the collection costs. However, given the totality of the circumstances, in the absence of other verifiable documents to substantiate her protest, Taxpayer failed to meet her burden of proof under IC § 6-8.1-5-1(c). Since the Refund Offset was applied to partially satisfy the initial assessment, Taxpayer is responsible for the remainder of the outstanding balance.

FINDING

Taxpayer's protest is sustained, in part, and respectfully denied in part. Taxpayer is not liable for the collection costs. Taxpayer, however, is responsible for the remainder of the assessment.

March 13, 2023

Posted: 05/24/2023 by Legislative Services Agency
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