

**Letter of Findings: 01-20221286
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 (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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 failed to establish that he should not be taxed on a payment resulting from a distribution from his ex-wife's individual retirement account.

ISSUE

I. Individual Income Tax - IRA Taxation.

Authority: [IC 6-3-1-3.5](#); [IC 6-3-2-1](#); [IC 6-3-2-2](#); [IC 6-8.1-5-1](#); [IC 33-26-3-1](#); *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 USCA § 408; Department of the Treasury Internal Revenue Service Publication 590-A (2018 version).

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

STATEMENT OF FACTS

Taxpayer and his wife were Indiana residents. In 2018, the parties divorced. While the divorce was pending, wife withdrew money from and closed an individual retirement account ("IRA"). Wife did not tell Taxpayer or the divorce court about the existence or closure of the IRA. Ultimately, Taxpayer received half of the value of the IRA.

Taxpayer later received a notice from the federal government regarding a federal tax liability. The new federal tax liability was related to the IRA distribution. Taxpayer successfully sued wife for reimbursement of the federal tax liability. The accompanying court order stated wife "shall be responsible for any and all tax liabilities associated with the distribution of [amount] from the undisclosed IRA." The order also provided a date by which wife was required to pay the liability and furnish written proof of payment to Taxpayer's attorney.

The Indiana Department of Revenue ("Department") learned of Taxpayer's monetary gain from wife's IRA closure and court ordered payment and issued an assessment for additional income tax. Taxpayer protested the assessment. An administrative hearing was held. This Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - IRA Taxation.

DISCUSSION

The Department determined that Taxpayer owed additional income tax after reviewing information related to his 2018 Indiana tax return. Taxpayer disagreed and argued that pursuant to a court order, wife was responsible for all tax liabilities associated with the IRA distribution.

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); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). An assessment, including Taxpayer's penalty assessment, is therefore presumed valid. A taxpayer must provide documentation explaining and supporting that the Department's position is wrong. Additionally,

"[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](#). [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\(a\)](#).

Generally, under 26 USCA § 408(d), "any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distribute . . . in the manner provided under section 72." The transfer of an individual's interest in an individual retirement account to a former spouse under a divorce instrument is not considered a taxable transfer, and the interest at the time of the transfer is treated as an individual retirement account of such spouse. 26 USCA § 408(d)(6). If an interest in an IRA is transferred from a former spouse by a divorce decree, the interest is treated as the receiving person's own IRA. Department of the Treasury Internal Revenue Service Publication 590-A (2018 version), <https://www.irs.gov/pub/irs-prior/p590a--2018.pdf>. The transfer is tax free as long as the transfer complies with rules governing IRA transfers. *Id.* Two common ways for a tax-free transfer is changing the name on the IRA or making a direct transfer of IRA assets. *Id.* If an eligible distribution is not "rolled over," the distribution is taxable in the year it was received. *Id.*

In support of his protest, Taxpayer provided an explanation of what happened, a copy of his federal Record of Accounts, and a copy of the related court order.

Taxpayer and wife timely filed their federal tax return for tax year 2018. This was the last tax year in which the parties were married. Taxpayer later discovered wife intentionally closed the IRA account and kept the cash for herself while the divorce was pending. As a result of wife's failure to disclose the existence of the IRA, Taxpayer sued wife and obtained a court order which provided him with half of the value of the account. Taxpayer received the money as a cash settlement; none of the money was "rolled over" into Taxpayer's retirement account(s).

Had wife complied with the required rules for distributions from IRAs and either changed the name on the IRA or made a direct transfer of assets, then the distributed amount for both Taxpayer and wife would have been tax free under 26 USCA § 408(d). However, because the value of the IRA was received by Taxpayer as a cash payout and not placed in another retirement account as a "distribution," the amount was taxable. Thus, Taxpayer was correctly assessed by the Department for taxes due.

Taxpayer presented a county court order specifically stating wife is responsible for any tax debt associated with the IRA during the protest review. The Department recognizes why Taxpayer would think that this information should be enough to consider wife responsible for the taxes associated with the IRA; however, pursuant to [IC 33-26-3-1\(a\)](#), the Indiana Tax Court has exclusive jurisdiction over the Department. The Department is not bound by the directives outlined in the county court order. Even assuming for argument's sake that the Department was bound by the county court order, the order only says that wife is responsible for paying the tax. The order does not say that wife is the taxpayer for the purposes of this protest.

At this time, Taxpayer is required to pay the assessed taxes. Taxpayer then has two options. Taxpayer can sue wife a second time to obtain a judgment against her so that she is required to reimburse him the tax amount he was assessed and paid to the Department. Taxpayer also has the option of appealing the decision in this Letter of Findings to the Indiana Tax Court. Thus, Taxpayer has not met the burden imposed under [IC 6-8.1-5-1\(c\)](#). Taxpayer's protest is denied.

FINDING

Taxpayer's protest is denied.

December 5, 2022

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An [html](#) version of this document.