

**Letter of Findings: 01-20231082**  
**Individual Indiana Income Tax**  
**For the Year 2017**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual was required to report his Indiana adjusted gross income to comport with the adjusted gross income as adjusted by the IRS. Based on the best federal and Department information available, the Department did not err in assessing Individual additional income tax; the Department agreed that the penalty assessment should be abated.

### ISSUE

#### I. Indiana Individual Income Tax - 2017 Income Tax Assessment.

**Authority:** [IC 6-3-1-3.5](#); [IC 6-3-2-1](#); [IC 6-8.1-5-1](#); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 15-5-1](#).

Taxpayer argues that the Department's assessment of additional 2017 Indiana income tax was wrong because Taxpayer correctly reported his Indiana adjusted gross income and was entitled to claim the depreciation expenses originally reported on his 2017 federal return.

#### II. Indiana Individual Income Tax - Penalty and Interest.

**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](#); [45 IAC 15-11-2](#).

Taxpayer argues that the circumstances leading to Indiana's income tax assessment justify an abatement of the resulting penalty and interest charges.

### STATEMENT OF FACTS

Taxpayer is an Indiana resident who filed a 2017 Indiana income tax return. The Indiana Department of Revenue ("Department") reviewed the return. The Department's review resulted in an assessment of additional 2017 Indiana income tax.

In a letter dated June 23, 2022, the Department explained as follows.

A review of your Indiana Individual Income tax for the period ending December 31, 2017, indicates you owe an additional [approximately \$3,370]. This amount represents the full liability due including all assessed penalties and interest to date.

The Department assessed approximately \$2,700 in tax, a \$90 penalty, \$180 in interest, and \$400 categorized as "other."

On that same letter, the Department explained the reason it issued the assessment as follow:

Adjustments have been made to your Indiana tax return for the period referenced in this notice. These changes are a result of an audit conducted by the Internal Revenue Service that affected your Indiana tax return.

....

Indiana's individual income return begins with FAGI (Federal adjusted gross income) reported on your IRS Form or equivalent. If you disagree with the increase in FAGI and the IRS has made a final determination for this period, you must submit an IRS Record of Account to show a reduced FAGI.

Taxpayer stated that the IRS's audit disallowed certain equipment depreciation expenses claimed on his federal return. Taxpayer's explanation as that the IRS disallowed the expenses because he "didn't make enough money to qualify for the depreciation." According to Taxpayer, he was subsequently unable to resolve the federal depreciation issue and, as of the date of this decision, the IRS stands by its decision.

Taxpayer disagreed with the Department's assessment and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer explained the basis for his protest. This Letter of Findings results.

## **I. Indiana Individual Income Tax - Addressing 2020 Income Tax Assessment.**

### **DISCUSSION**

The issue is whether Taxpayer has met his burden of establishing that the proposed assessment of additional income tax was wrong.

As noted, Taxpayer filed an Indiana 2017 tax return. On that return, Taxpayer reported a specific amount of FAGI. The assessment at issue stems from the IRS's determination that the amount of FAGI reported on the federal return was wrong because Taxpayer was not entitled to claim depreciation expenses offsetting a portion of the FAGI.

As with any assessment of Indiana listed taxes, it is Taxpayer's responsibility here to establish that the proposed assessments of tax, interest, and penalty are incorrect. As stated in [IC 6-8.1-5-1\(c\)](#) and Indiana case law, "The 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." See also *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).

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 in determining the taxpayer's taxable income and calculate what would be their Indiana income tax after applying any particular additions and subtractions. The statute provides in small part that Indiana adjusted gross income starts with "'adjusted gross income' (as defined in Section 62 of the Internal Revenue Code) . . ." *Id.*

As noted above, Taxpayer reported an amount of FAGI on his individual Indiana tax return. Nonetheless, according to information provided to the Department, the correct amount was greater than the amount originally reported.

Taxpayer has provided no information or documentation which addresses the disputed federal adjustment. Whether or not the IRS adjustment disallowing the depreciation expenses was correct is not for the Department to decide. Instead, the Department correctly based the assessment on the best information available to it. Thereafter the Department did what is required of it as called for under [IC 6-8.1-5-1\(b\)](#). That statute mandates that "[i]f the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available." (*Emphasis added*) See also [45 IAC 15-5-1](#).

In this case, the Department is obligated to follow Indiana law; the calculation of an individual's Indiana income tax starts with FAGI. Simply put, Indiana's calculation of Indiana individual income tax starts with federal adjusted gross income as reported to or adjusted by the IRS.

The Department concludes that Taxpayer was unable to meet his burden under [IC 6-8.1-5-1\(c\)](#) of establishing that Indiana's assessment was wrong.

### **FINDING**

Taxpayer's protest is respectfully denied.

## II. Indiana Individual Income Tax - Penalty and Interest.

### DISCUSSION

The issue is whether Taxpayer has established that the Department should exercise its authority and discretion to abate the penalty and interest charges.

#### A. Penalty.

[IC 6-8.1-10-2.1\(a\)\(3\)](#) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. [IC 6-8.1-10-2.1\(a\)\(2\)](#) requires a ten-percent penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment."

[IC 6-8.1-10-2.1\(d\)](#) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty."

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." *Id.*

Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed . . . ."

Under [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." An assessment - including the negligence penalty - is presumptively valid.

The Department concludes that Taxpayer erred in determining his Indiana income tax liability. However, there is insufficient information to establish that Taxpayer's claim to depreciation expenses was so egregious as to constitute "willful neglect." Based on a "case-by-case" analysis and after reviewing "the facts and circumstances of each taxpayer" the Department agrees that the penalty should be abated.

#### B. Interest.

The interest issue raised by Taxpayer is addressed by [IC 6-8.1-10-1\(e\)](#). The statute provides, "Except as provided by [IC 6-8.1-3-17\(c\)](#), [IC 6-8.1-3-17\(e\)](#), [IC 6-8.1-5-2](#), and section 2.1(k) of this chapter, the department may not waive the interest imposed under this section." The three "excepts" cited in the statute are not relevant to Taxpayer's pending income tax assessment. As a result, the Department has no authority to abate the interest charges.

### FINDING

Taxpayer's protest is sustained in part and denied in part. The Department agrees that Taxpayer has met his burden of establishing that the penalty should be abated. Given the facts and circumstances, the Department has no authority to abate the interest charges.

### SUMMARY

The Department did not agree that Taxpayer met his burden of establishing that tax and interest charges were wrong. However, the Department agrees that the penalty should be abated.

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