

Supplemental Letter of Findings: 01-20200081
Indiana Individual Income Tax
For the Years 2016, 2017, and 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individuals failed to meet their burden of proof regarding a protest of a denied Indiana Research Expense Credit.

ISSUE

I. Individual Income Tax - Research Expense Credit.

Authority: [IC 6-3.1-4-1](#); [IC 6-3.1-4-4](#); [IC 6-8.1-5-1](#); [IC 6-8.1-5-4](#); Treas. Reg. 1.41; *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); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Express Scripts Inc. v. Indiana Dep't of State Revenue*, 170 N.E.3d 273 (Ind. Tax Court 2021).

Taxpayers protests the denial of Indiana Research Expense Credit for the years 2016, 2017, and 2018.

STATEMENT OF FACTS

Taxpayers are a married couple who filed joint returns for the years at issue. The husband is a twenty-five percent shareholder of a company, hereinafter referred to for convenience by the fictive name "Company A" (for taxpayer confidentiality purposes the actual company name is not used in this Finding). Company A was audited by the Indiana Department of Revenue ("Department") for Indiana income tax purposes for the tax years 2016, 2017, and 2018. Company A, for those years, claimed the Indiana Research Expense Credit ("REC"). The Department's auditor, after examining the "limited records for 2016 and no records for either 2017 or 2018," stated in the Audit Report that "[f]or the reasons set forth in [the] audit report, the Indiana Research Expense Credit for the years 2016, 2017, and 2018 are [] denied in full pursuant to [IC 6-3.1-4-1](#) and [IC 6-3.1-4-4](#)." Since the REC was passed through to Taxpayers from Company A, this in turn led to an adjustment to Taxpayers' Indiana income tax returns for the years at issue.

Taxpayers, via husband as a shareholder of Company A, filed a protest with the Department. An administrative hearing was scheduled on the matter in August of 2020, but neither Taxpayers nor their representative attended the hearing (nor did Taxpayers or their representative present to the Department a Protest Resolution Extension Request form to reschedule the hearing). The Department issued a letter to Taxpayers' representative regarding the failure to attend the hearing or request a continuance. Taxpayer's representative in turn requested that the protest "be reinstated and a new [hearing] date be set," citing the representative's "office running at a limited capacity and most professionals working from home" and that impacting the receipt of correspondence. Given that 2020 was during a global pandemic, the Department granted the request as a rehearing. The Department scheduled a rehearing date which was held in May of 2022. The rehearing was held and this written ruling results. Additional facts will be provided as necessary below.

I. Individual Income Tax - Research Expense Credit.

DISCUSSION

As noted in the Statement of Facts, Company A's Indiana Research Expense Credit for the years at issue was denied pursuant to an audit. Company A explained that it had "hired an independent third party . . . to conduct an Indiana Research & Development Tax Credit study for each year." The auditor received copies of the studies. The

Audit Report noted that regarding "Documentation and Substantiation of the Research Expense Credit" that Taxpayer "has not retained records to substantiate qualification for the credit or to substantiate the amount of the credit" pursuant to the applicable Treasury Regulations and IC § 6-8.1-5-4(a). Regarding the possibility of "shrinking back" under "Treas. Reg. 1.41-4(b)(2)," the Audit Report states that "no records were provided which allowed for a shrink back."

Taxpayers' representative, as part of the initially filed protest, stated:

The taxpayer protests the disallowance of the Research and Development Credits and will provide additional supporting documentation to and at the hearing.

Taxpayers did not provide additional supporting documentation. This failure to provide relevant supporting documentation, and the law regarding burden of proof, is addressed below.

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. The Indiana Tax Court has noted that poorly developed and non-cogent arguments are subject to waiver. *Scopolite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dept of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

A taxpayer, when submitting evidence as part of the taxpayer's protest, needs to specify and explain the portions of the evidence that taxpayer believes to be relevant. As the Indiana Tax Court has previously noted (in the context of a summary judgment motion): "the Court will not consider" exhibits "on the off chance that it might find, on its own and undirected, some fact that supports" a claim, and "the Court is not required to search for specific facts on which" a party relies. *Express Scripts Inc. v. Indiana Dep't of State Revenue*, 170 N.E.3d 273, 279 (Ind. Tax Court 2021).

Lastly, the Department notes that, "[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).

In the present case, Taxpayers did not provide any relevant or substantive supporting documentation as part of the protest (Taxpayers also protested "related penalties and interest," but also failed to develop any argument or provide any supporting documentation regarding those issues). The protest was filed in 2020 with the administrative hearing scheduled for August of 2020. As stated *supra*, neither Taxpayers nor their representative took part in the scheduled hearing, nor did they secure an extension. The Department granted a rehearing for the protest, which took place in May of 2022. After the rehearing, on the same day, the Department sent a follow-up e-mail to Taxpayers' representative stating in relevant part, "I look forward to receiving the documents [] discussed in our earlier meeting." In October of 2022 the Department sent Taxpayers' representative an e-mail stating, in part, that the Department still "needed a copy of the documents provided by [Company A] to support the claimed research expense credits during the audit." No relevant, supporting documentation has been provided by Taxpayers. Thus, Taxpayers have not met the burden of proving the proposed assessment is wrong, as required under IC § 6-8.1-5-1(c) and the applicable case law cited above.

FINDING

Taxpayers' protest is denied.

January 31, 2023

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