

**Letter of Findings: 01-20221793
Indiana Individual Income Tax
For the Tax 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 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Having filed a joint 2018 federal income tax return, Out-of-State Residents were required to file a joint Indiana income tax return reporting and accounting for the income earned by both Residents and based on the amount of federal adjusted gross income reported on their federal return.

ISSUE

I. Indiana Individual Income Tax - Filing a Joint Indiana and Joint Federal Income Return.

Authority: [IC 6-3-1-3.5](#); [IC 6-3-2-1](#); [IC 6-3-4-2](#); [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).

Taxpayer challenges the Department's decision assessing an additional assessment of Indiana income tax, interest, and penalty.

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](#).

Taxpayer asks that the Department exercise its authority to abate the ten-percent negligence penalty and any interest charges.

STATEMENT OF FACTS

Husband and Wife Taxpayers (hereinafter "Husband" and/or "Wife") currently live and work outside Indiana. Husband timely filed a 2018 Indiana IT-40 ("Indiana Full-Year Resident Income Tax Return"). On that return, Husband reported approximately \$70,000 in federal adjusted gross income.

The Indiana Department of Revenue ("Department") reviewed the return and eventually determined that Husband owed additional Indiana income tax. In a letter dated December 2021, the Department explained as follows:

A review of your Indiana Individual Income tax for the tax period ending December 31, 2018, indicates you owe an additional [approximately \$12,000]. This amount represents the full liability due including all assessed penalties and interest to date.

In that same letter, the Department further explained as follows:

The Indiana Department of Revenue has determined your reported federal adjusted gross income is understated based on information received from external third-party sources. The sources could include employer wage information or other income reported to the Indiana Department of Revenue by the payer, as well as information received from the Internal Revenue Service.

As noted, Husband reported approximately \$70,000 in adjusted gross income. The Department increased that to approximately \$250,000 to comport with the adjusted gross income reported on Husband and Wife's joint, 2018 federal return.

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

I. Indiana Individual Income Tax - Filing a Joint Indiana and Joint Federal Income Return.

DISCUSSION

The issue is whether Husband has provided sufficient information to correct a reporting error attributable to his original 2018 Indiana IT-40 income tax return.

Understanding the issue requires consideration of the circumstances which led to what the Department found was a reporting error:

- Husband and Wife resided in separate states during 2018 with Husband residing in Indiana and Wife residing first in Virginia and, later that same year, in Kansas;
- Husband received W-2 income from Indiana and from Kansas;
- Husband and Wife submitted a 2018 federal "Married Filing Jointly" income tax return;
- Husband also self-prepared state tax returns for Indiana, Kansas, and Virginia reporting income attributable to those three states;
- The Department reviewed Husband's Indiana return and determined that Husband 2018 underreported his federal adjusted gross income.

Husband explains the results:

The discrepancy resulting in the assessment arises from my Indiana state return listing my income as obtained in Indiana, not inclusive of our earnings in Kansas and Virginia.

Husband explains between all three state returns, both his and Wife's income derived from Indiana, Kansas, and Virginia has been fully accounted for and reported to the correct authority. To resolve the yet pending assessment, Husband and Wife prepared an amended 2018 IT-40X accounting for both parties' multistate income and residences.

As with any assessment of Indiana listed taxes, it is Husband and Wife's responsibility here to establish that the proposed assessments of tax, interest, and penalty were 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, including during an action appealed to the tax court under this chapter. 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 to 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) . . ."

Husband has pointed out that taxpayers filing joint federal returns are required to also file joint Indiana returns and that Husband's decision to the contrary was wrong. The Department agrees.

[IC 6-3-4-2\(d\)](#) requires as follows.

Where a joint return is made by Husband and Wife pursuant to the Internal Revenue Code, a joint return shall be made pursuant to this article. Where a joint return is filed by a Husband and Wife hereunder, one spouse shall have no liability for the tax imposed by this article upon the income of the other spouse.

Indiana law requires Husband and Wife to file a joint 2018 Indiana return. Taxpayer has not established that the Department's proposed assessment was in any way wrong, as required by [IC 6-8.1-5-1\(c\)](#).

The Department also points out the principle that calculation of Indiana tax starts with the amount of federal adjusted gross income. [IC 6-3-1-3.5\(a\)](#) calls for taxpayers to report adjusted gross income as defined in I.R.C. §

62. The tax form's directions are also specific calling for taxpayers to enter their "federal adjusted gross income from [their] federal income tax return." Although [IC 6-3-1-3.5](#) calls for or allows Indiana specific modifications - both additions and subtractions - the starting point on the Indiana law is always adjusted gross income as reported on the federal return.

On his original 2018 return, Husband misreported the amount of federal adjusted gross income. The Department was correct in its December 2021 letter to Husband when it wrote that "your reported federal adjusted gross income is understated based on information received from external third-party sources."

Husband and Wife have filed an amended Indiana 2018 return which, when accepted, verified, and processed, will resolve any residual liability.

FINDING

To the extent that Taxpayers challenged the Department's initial assessment, Taxpayers' protest is respectfully denied.

II. Indiana Individual Income Tax - Penalty and Interest.

DISCUSSION

As noted in Part I above, Husband and Wife have filed an amended 2018 Indiana tax return intended to correct the misreporting of their federal adjusted gross income. Considering any "credit" for income tax paid in other states, Husband and Wife calculate that they will owe approximately \$1,100 in additional Indiana income tax. However, Husband states that \$1,100 "is an amount after penalty and interest" Taxpayers agree to pay the \$1,100 but, by implication, ask for abatement of penalty and interest.

[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."

Nevertheless, the law allows for the affected taxpayer to ask for, and the Department the authority to allow, abatement of the penalty.

[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 waive 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 here agrees that any errors stemming from or attributable to Husband's original Indiana income tax return did not constitute willful neglect and that the penalty should be abated. Husband has met his statutory burden of establishing that he acted with "reasonable care" and that the reporting error was not due to Husband or Wife's carelessness or willful neglect.

As to the request to abate the interest charges, the Department is unable to oblige. [IC 6-8.1-10-1\(e\)](#) states that "the department may not waive the interest imposed under this section." The Department is not permitted to abate or refund interest charges.

FINDING

Taxpayers' protest of the penalty is sustained. Taxpayers' protest of interest charges is denied.

January 26, 2023

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