

**Letter of Findings: 01-20231374  
Indiana Individual Income Tax  
For The Tax Year 2021**

**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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 not entitled to the refund of income tax because Individual's documentation failed to demonstrate that the adjustments and assessment were incorrect.

### **ISSUE**

#### **I. Indiana Individual Income Tax - Indiana Source Income.**

**Authority:** [IC 6-3-1-3.5](#); [IC 6-3-1-12](#); [IC 6-3-1-13](#); [IC 6-3-2-1](#); [IC 6-3-2-2](#); [IC 6-8.1-5-1](#); [IC 6-8.1-9-1](#); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); [45 IAC 15-9-2](#).

Taxpayer protests the Department's decision denying her refund of income tax and a proposed assessment for 2021.

### **STATEMENT OF FACTS**

Taxpayer is an individual who worked for an employer located in Indiana ("Indiana Employer"). Indiana Employer has been withholding income tax on wages it paid to Taxpayer and remitting the tax to the Indiana Department of Revenue ("Department"), as statutorily required.

In 2022, Taxpayer filed a Part-Year or Full-Year Nonresident Individual Income Tax Return for 2021 and requested a refund. The Department reviewed Taxpayer's filing and made line-by-line adjustments to Taxpayer's filing. The Department's line-by-line adjustments resulted in an assessment of additional tax, interest, and penalty.

Taxpayer protested, requesting that the Department make the final determination without a hearing based on the additional documents submitted. This final determination results. Additional facts will be added as necessary.

#### **I. Indiana Individual Income Tax - Indiana Source Income.**

### **DISCUSSION**

The Department, upon an initial review of Taxpayer's filing, denied Taxpayer's refund request on the ground that there were inconsistencies concerning Taxpayer's 2021 nonresident return. The Department determined that, during 2021, Taxpayer worked for the Indiana Employer in Indiana and the Indiana Employer reported wages paid to Taxpayer accordingly. As such, Taxpayer was required to report and pay Indiana income tax on income deemed attributable to Indiana, as reported by the Indiana Employer.

Taxpayer, to the contrary, argued that she was not an Indiana resident and she only spent 31 days "physically working in the state of Indiana" during 2021. Thus, Taxpayer asserted that she was entitled to the refund of income tax based on her calculation and the Department erred in denying her refund claim and assessing her additional tax.

The issue in this case, therefore, is whether Taxpayer demonstrated that she was not responsible for additional Indiana income tax, and if she was entitled to the refund because, as a nonresident, she correctly apportioned her wage income and paid her Indiana income tax on income that was attributable to Indiana.

As a threshold issue, 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). "[E]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Therefore, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. 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).

In addition, under Indiana tax law, when a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a refund claim "within three (3) years of . . . [t]he due date of the return [or] . . . [t]he date of payment" under [IC 6-8.1-9-1\(a\)](#). To request a refund of income tax, a taxpayer is required to file an original income tax return or amend his or her income tax return. The taxpayer also must clearly state "the amount of the refund," and a "detailed explanation of the basis of the claim such that the department may determine its correctness," "the tax period for which the overpayment is claimed," and "the year and date of the overpayment." [45 IAC 15-9-2\(d\)](#).

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\(a\)](#). Indiana resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state . . . ." [IC 6-3-1-12](#). Nonresident is "any person who is not a resident of Indiana." [IC 6-3-1-13](#).

To efficiently compute Indiana resident's state income tax, the Indiana law references 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 the taxpayer's Indiana income tax after applying certain additions and subtractions to that starting point. [IC 6-3-2-2\(a\)](#) specifically outlines what is income derived from Indiana sources subject to Indiana income tax, in part:

With regard to corporations and **nonresident persons**, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
  - (2) income from doing business in this state;
  - (3) income from a trade or profession conducted in this state;
  - (4) compensation for labor or services rendered within this state; and**
  - (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.
- (Emphasis added).**

In this instance, pursuant to the initial review, the Department determined that Taxpayer worked for the Indiana Employer headquartered in Indiana and the Indiana Employer properly withheld tax on wages paid to Taxpayer. As such, Taxpayer's wage income from the Indiana Employer was subject to Indiana income tax because her income was derived from an Indiana source under the Indiana law. Thus, there is a rebuttable presumption that the full amount of Taxpayer's wage income, as reported, was subject to Indiana income tax because during 2021, Taxpayer - as an employee working for the Indiana Employer headquartered in Indiana - received "compensation for labor or services rendered within [Indiana]" under [IC 6-3-2-2\(a\)\(4\)](#).

Taxpayer protested, stating, in part:

I do not agree with nor do I accept the findings of the DOR with respect to the days that I have worked in the state of Indiana in my role with [Indiana Employer].

For background, my primary residence is [out-of-state]. I would travel back and forth to Indiana to [Indiana Employer's] corporate offices. The COVID 19 back to office protocol established by [Indiana Employer] for calendar year 2021 for my role was one week in [Indiana Employer's] corporate offices each month ONLY.

Thus, my 2021 taxes were filed based on the actual days that I was physically working in the state of Indiana which is 31 days in state [versus] 193 working days in Indiana for allocation [percentage] of 16.06[percent]. Accordingly, I took total payroll per W-2 of [total amount multiplied by 16.06 percent] and reported [a portion]

of taxable wages to IN. I should not pay tax on 83[percent] of the wages when I was only physically working in the state of Indiana for 31 days in the 2021 tax year.

To support her assertion, Taxpayer provided a W-2 statement, a letter from Indiana Employer, and a one-page Excel summary concerning her flights information for 2021.

Upon review, however, Taxpayer's reliance of her supporting documentation is misplaced. Taxpayer first stated that "The COVID 19 back to office protocol established by [Indiana Employer] for calendar year 2021 for my role was one week in [Indiana Employer's] corporate offices each month ONLY." As such, there is no dispute that Taxpayer was required to render her services in Indiana. Also, there is no dispute that Taxpayer received "compensation for labor or services rendered within this state." The Indiana Employer reported approximately 50 percent of the total wage it paid to Taxpayer for services rendered in Indiana and remitted tax to Indiana accordingly. As such, that amount reported by the Indiana Employer was deemed attributable to Indiana source subject to Indiana income tax.

Taxpayer, in this instance, seemingly argued that the full amount of wage income she received from her Indiana Employer was to compensate her for services she rendered both within and without Indiana. Such compensation, according to Taxpayer, was for a total of 193 working days during 2021. Further, according to Taxpayer, she travelled between Indiana and her primary residence outside of Indiana to fulfill her contractual obligations. Taxpayer thus apportioned 31 days out of the 193 days for reporting Indiana income tax purposes because according to Taxpayer, she was only actually or physically working in Indiana for 31 days and she was only responsible for paying Indiana income tax on compensation she received from her Indiana Employer for 31 out of the 193 working days.

As mentioned above, pursuant to [IC 6-3-2-2\(a\)\(4\)](#), there is a rebuttable presumption that the amount of Taxpayer's wage income, as reported by the Indiana Employer, was subject to Indiana income tax. Taxpayer's supporting documentation was inconsistent with the Indiana Employer's initial reporting and Taxpayer's statement. In addition, Taxpayer's one-page Excel summary of her flight information - without additional verifiable supporting documentation - at best, simply provided summary information of her flights in 2021. Such flight information failed to establish any verifiable evidence that could be helpful to rebut the presumption. Without a corrected W-2 statement or the verifiable employment contract, to which both Taxpayer and her Indiana Employer agreed, specifying where and how Taxpayer should have fulfilled her contractual obligations, the Department is not able to agree that Taxpayer met her burden pursuant to [IC 6-8.1-5-1\(c\)](#).

In short, "[e]ach assessment and each tax year stands alone." *Miller Brewing*, 903 N.E.2d at 69. Given the totality of the circumstances, in the absence of other verifiable supporting documents, Taxpayer failed to provide verifiable documentation, demonstrating that the Department erred in denying her refund claim and assessing additional income tax on income deemed attributable to Indiana subject to Indiana income tax.

## FINDING

Taxpayer's protest is denied.

June 5, 2023

*Posted: 08/30/2023 by Legislative Services Agency*  
An [html](#) version of this document.