

Letter of Findings: 01-20231274
Indiana Individual Income Tax
For the Year 2018, 2019, and 2020

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Indiana Shareholder failed to meet its burden of establishing that the Department's audit adjustment to Shareholder's S-Corporation did not flow-through to Shareholder and that the Department's assessment of Indiana income tax was wrong.

ISSUE

I. Indiana Individual Income Tax - Flow-Through Income.

Authority: [IC 6-3-4-11](#); [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); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Letter of Findings 04-20231273 (August 23, 2023).

Taxpayer argues the Department made a mistake when it found that Taxpayer received additional income from Taxpayer's S-Corporation.

STATEMENT OF FACTS

Taxpayer owns and operates a business organized as an S-Corporation. The company is in the business of selling tools and other equipment used to repair automobiles.

The Department conducted an audit of Taxpayer's business and Taxpayer himself.

The Department found that the business failed to properly account for transactions in which the customer provided a coupon or discount card. Because the Department found that the S-Corporation failed to properly account for these sales, the Department also found that Taxpayer was responsible for paying additional Indiana Individual income tax.

Taxpayer disagreed with the assessment and submitted two protests to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

The S-Corporation's protest is addressed in a companion decision designated as Letter of Findings 04-20231273 (August 23, 2023).

I. Indiana Individual Income Tax - Flow-Through Income.

DISCUSSION

The issue is whether the Department made a mistake in adjusting the S-Corporation's sales records and, as a result, proceeded to compound that mistake by assessing Taxpayer additional Indiana income tax.

The income tax issue requires a reference to the conclusions set out in Letter of Findings 04-20231273. The August 31, 2023, Letter of Findings quotes from the Department's audit report.

The [S-Corporation] continued to incorrectly report its sales tax under the sole proprietor account. The [S-Corporation] has been advised to close this account and open an account under the S-Corporation.

....

The total sales as determined in the [S-Corporation] sales and use tax audit . . . was compared to the total gross receipts on the Federal 1120S. This comparison revealed [S-Corporation] underreported its sales in both years.

The August Letter of Findings noted that the S-Corporation failed to account for income received from sales in which the customer provided a rebate coupon or a manufacturer's discount card. The Department found that the S-Corporation failed to distinguish between discounts and rebates.

[If a vendor] sells a \$100 tool to a customer who provides a 20 percent discount coupon - such as that routinely provided by manufacturers - the total price is "fixed and determinable", and the gross retail income received for the purchase is \$100. The \$100 is the total amount the vendor will ever receive and \$100 is the amount of gross retail income received by the vendor.

....

The Department determined that [S-Corporation] was selling tools subject to a rebate while [S-Corporation] claims it was selling tools at a discount; [T]he Department found that [S-Corporation] received \$100 in gross retail income, but [S-Corporation] claimed that its gross retail income was \$80.

The S-Corporation Letter of Findings concluded:

The issue is whether [S-Corporation] reported the correct amount of gross retail income. The answer is that it did not because [S-Corporation] did not properly account for the manufacturer rebates.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in [IC 6-8.1-5-1\(c\)](#), "The notice of proposed assessment is prima facie evidence that the department'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 Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

To meet the statutory burden, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Further, "[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). Thus, interpretations of Indiana tax law contained within this decision, as well as the preceding audit, are entitled to deference.

Although this Letter of Findings addresses the assessment of individual income tax, Taxpayer correctly explains that the "rebate certificates - issued by the franchisor - 'are the sole and only issue in this appeal.'"

Because Taxpayer organized his business as an S-Corporation, [IC 6-3-4-11](#) imposes on the Taxpayer the responsibility for paying Indiana individual income tax on his share of the income earned from that business. The statute provides in part:

A partnership as such shall not be subject to the adjusted gross income tax imposed by [IC 6-3-1](#) through [IC 6-3-7](#). *Persons or corporations carrying on business as partners shall be liable for the adjusted gross income tax only in their separate or individual capacities.* In determining each partner's adjusted gross income, such partner shall take into account his or its distributive share of the adjustments provided for in [IC 6-3-1-3.5](#).

[IC 6-3-4-11\(a\)](#) (*Emphasis added*).

In this instance, the Taxpayer - as in the S-Corporation protest - has failed to meet his statutory burden under [IC](#)

[6-8.1-5-1](#)(c) of establishing that the Department's assessment of Indiana individual income tax was wrong.

FINDING

Taxpayer's protest is respectfully denied.

August 31, 2023

Finding Replaces: New

Posted: 11/01/2023 by Legislative Services Agency
An [html](#) version of this document.