

Final Order Denying Refund: 01-20231335
Individual Income Tax
For 2021

NOTICE: [IC 4-22-7-7](#) permits the publication of this document in the Indiana Register. The publication of 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. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this determination.

HOLDING

Individual was not entitled to additional refund because his W-2 income was deemed deferred compensation attributable to services performed in Indiana and taxable by Indiana, where the services were performed.

ISSUE

I. Individual Income Tax - Indiana Income.

Authority: [IC 6-3-1-3.5](#); [IC 6-3-1-12](#); [IC 6-3-1-13](#); [IC 6-3-2-2](#); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); [45 IAC 3.1-1-7](#); Black's Law Dictionary (11th ed. 2019).

STATEMENT OF FACTS

Taxpayer, an individual, resided in Indiana and worked for a company in Indiana ("Indiana Employer") until early 2018. 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 February 2018, Taxpayer left Indiana Employer. Taxpayer subsequently relocated to work for a different company in another state. Taxpayer and his wife sold their Indiana residence and subsequently established their residence in another state.

In late 2022, Taxpayer filed an Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return (Form IT-40PNR) for the tax year 2021. Taxpayer requested a \$83,138 refund of Indiana income tax withheld by Indiana Employer. The Department reviewed Taxpayer's 2021 filing, including the W-2 statement issued by Indiana Employer. The Department adjusted Taxpayer's filing and granted a \$45 refund.

Taxpayer protested and requested that the Department make the final determination without a hearing based on the additional documents submitted. This final determination results.

I. Individual Income Tax - Indiana Income.

DISCUSSION

Upon initial review of Taxpayer's filing for 2021, the Department determined that Taxpayer's W-2 income was attributable to Indiana source income subject to Indiana and local income tax. The Department made line-by-line adjustments to Taxpayer's filing and granted a \$45 refund.

Taxpayer disagreed, stating the following:

On the Taxpayer's 2021 filing, the Taxpayer claimed no income subject to Indiana income tax and requested a full refund of \$83,138 in Indiana taxes withheld on W-2 compensation. The [Department] adjusted the Taxpayer's filing by increasing Indiana taxable income [] to reflect Indiana compensation reported on a W-2 from [Indiana Employer].

The issue, therefore, is whether Taxpayer provided documentation sufficiently to support his protest that his W-2 income from Indiana Employer was not Indiana source income subject to Indiana and local income tax. When a taxpayer challenges taxability in a specific instance, the taxpayer is required to provide documentation explaining and supporting its challenge. 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). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

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.

For nonresident persons, [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).

[45 IAC 3.1-1-7](#) addresses "Allocation and Apportionment of Unearned Income for Individuals," in relevant part:

(2) Income from a pension, annuity, profit-sharing, or stock-option plan that meets the qualifications of the Internal Revenue Code is taxed by the state of legal residence. Lump sum distributions from qualified plans are taxed by the state which, at the time of the distribution, is the taxpayer's legal residence. Whether a plan meets the qualifications of the Internal Revenue Code is determined by the Internal Revenue Service.

(3) Deferred compensation, other than that from a qualified retirement plan as described above, is directly attributable to services performed, and is taxed by the state where the services were performed. . . .

(Emphasis added).

"Deferred compensation" means "1. Payment for work performed, to be paid in the future or when some future event occurs. 2. An employee's earnings that are taxed when received or distributed rather than when earned, such as contributions to a qualified pension or profit-sharing plan." COMPENSATION, Black's Law Dictionary (11th ed. 2019), available at westlaw.com, (last visited September 8, 2023).

In this instant case, Taxpayer in his protest letter stated the following:

The Taxpayer's 2021 [] W-2 reported [] compensation, which consists of [] non-qualified [] stock option exercises that do not satisfy the requirement of a statutory stock option under the Internal Revenue Code.

The non-qualified stock options were granted in 2013, 2016, and 2017. The tax consequences of the non-qualified stock options are triggered on the dates of the exercise. Non-qualified stock options are not included in employee income by an employer until exercised. . . . The taxable event does not occur until the exercise of the non-qualified stock option.

The Taxpayer received the 2021 [] compensation in connection with income from exercising non-qualified stock options more than one year after leaving the [Indiana Employer].

. . . Taxpayer's state of residence [was not Indiana] for all of 2021.

To support his protest, in addition to a letter confirming his separation from Indiana Employer, Taxpayer offered additional documentation including an employment contract for his new position in another state, purchase of his new residence, as well as sale of his Indiana residence.

Admittedly, Taxpayer was not an Indiana resident and did not work in Indiana in 2021. Taxpayer claimed that the W-2 income he received in 2021 was attributable to his decision to exercise the non-qualified stock options granted by Indiana Employer in 2013, 2016, and 2017. Taxpayer maintained that those non-qualified stock options were granted in 2013, 2016, and 2017 by Indiana Employer, which were non-taxable events when granted. Taxpayer asserted that, in 2018, he left Indiana Employer for a new employment in a different state. Thus, Taxpayer argued that when he exercised his stock options in 2021, which was a taxable event, he was not an Indiana resident and the W-2 income in question was not Indiana income subject to Indiana income tax.

Based on the information submitted, however, Taxpayer is mistaken. Specifically, Taxpayer here failed to consider that Indiana Employer in this case granted Taxpayer non-qualified stock options in 2013, 2016, and 2017 as part of compensation for personal services that Taxpayer performed in Indiana during those years. When he exercised the non-qualified stock options, Taxpayer received the payment that was the difference between the option price and the market value of the stock. But for Taxpayer's services in Indiana for those years, Indiana Employer would not have granted the non-qualified stock options to Taxpayer in 2013, 2016 or 2017. The non-qualified stock options therefore were granted in connection to his services in Indiana during those years when Taxpayer worked for Indiana Employer in Indiana. The non-qualified stock options were "deferred compensation" because they were "directly attributable to services performed" in Indiana. Therefore, Taxpayer's W-2 income in question was deferred income directly attributable to Indiana source subject to Indiana income tax because that income was "taxed by the state where the services were performed," namely Indiana. Thus, Indiana Employer properly withheld income tax on the W-2 income and the Department correctly adjusted Taxpayer's initial filing because the W-2 income in question was attributable to Indiana source subject to Indiana income tax pursuant to [IC 6-3-2-2\(a\)\(4\)](#) and [45 IAC 3.1-1-7\(3\)](#).

To conclude, given the totality of the circumstances and based on the documentation submitted, the Department is not able to agree that Taxpayer was entitled to a full refund. Taxpayer's documents demonstrated that the W-2 income in question was deemed deferred compensation for personal services previously performed in Indiana. As such, pursuant to the above-mentioned Indiana law, the W-2 income was attributable to Indiana source subject to Indiana income tax.

FINDING

Taxpayer's protest is respectfully denied.

September 15, 2023

Finding Replaces: New

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