

**Letter of Findings: 01-20231801**  
**Individual Income Tax**  
**For The Years 2019, 2020, 2021, and 2022**

**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 (the "Department") 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 provided documentation establishing that the Department's assessments and refund denial were incorrect.

### ISSUE

#### I. Individual Income Tax - Assessment.

**Authority:** [IC 6-3-1-3.5](#); [IC 6-3-2-1](#); [IC 6-3-2-2](#); [IC 6-8.1-5-1](#); *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); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayers protest the Department's assessment of additional individual income tax.

### STATEMENT OF FACTS

Taxpayers are a married couple. Husband was a contract employee for the military at an Indiana location for several of years. While Husband was employed at the Indiana military location, Taxpayers were full-time Indiana residents. In 2013, Husband's employment was transferred to Ohio. As a result of the transfer, Taxpayers moved from Indiana to Ohio and became full-time Ohio residents.

Husband's employer continued to withhold Indiana county taxes after the couple became Ohio residents. After a review of Indiana Department of Revenue ("Department") records, the Department issued Notices of Proposed Assessment for tax years 2019, 2020, and 2021, and did not issue Taxpayers a refund for tax year 2022.

Taxpayers protested the assessments and the denial of the 2022 refund. Taxpayers requested resolution with a hearing. An administrative hearing was held in which Taxpayers' representative appeared on their behalf. This Letter of Findings results. Additional facts will be provided as necessary.

#### I. Individual Income Tax - Assessment.

### DISCUSSION

The Department determined that Taxpayers owed additional individual income tax and denied Taxpayers' refund request for tax year 2022. Taxpayers disagreed with the assessments and refund denial and initiated a protest. In support, Taxpayers' representative provided an explanation of events and copies of Taxpayers federal individual income tax returns, Ohio individual income tax returns, and Indiana Form IT-40PNR for tax years 2019, 2020, 2021, and 2022. Additionally, a review of the Department's system provided information related to Taxpayers' filings of Form IT-40RNR for those same tax years.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. A proposed assessment is prima facie evidence that DOR's claim for the unpaid tax is valid. [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. *Id.*; See e.g., *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). An assessment, including Taxpayer's penalty assessment, is therefore presumed valid. A taxpayer must provide documentation explaining and supporting that the Department's position is wrong. Additionally,

"[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).

Indiana imposes a tax "upon 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\(a\)](#). [IC 6-3-2-2\(a\)](#) outlines what is income derived from Indiana sources and subject to Indiana income tax. Indiana sourced income specifically includes income from a trade or profession conducted in Indiana. *Id.* There is a presumption that a taxpayer files his/her federal income tax return as required by the Internal Revenue Code. Thus, to effectively compute what is considered a taxpayer's Indiana income tax, Indiana law refers to the Internal Revenue Code. [IC 6-3-1-3.5](#) provides a starting point in determining a taxpayer's taxable income and calculating what would be his/her Indiana income tax after applying certain additions and subtractions, with any necessary modifications following. Modifications are outlined in [IC 6-3-1-3.5\(a\)](#).

Taxpayers' representative explained that Husband was employed in Indiana for a portion of the 2013 tax year. Sometime during that year, Husband's employment was transferred to Ohio, and Taxpayers moved to Ohio. After moving to Ohio, Taxpayers no longer had any Indiana sourced income. Even though Husband was no longer employed in Indiana, Husband's employer continued to withhold Indiana county taxes as well as Ohio county taxes. As a result, Taxpayers filed Form IT-40PNR as part of their Indiana tax return for tax year 2013.

Following the relocation to Ohio, Husband made multiple attempts to have his employer stop withholding Indiana county taxes because he was no longer an Indiana resident. His requests were unsuccessful. As a result, beginning in tax year 2014, Taxpayers filed Form IT-40RNR with the Department. This form is used for full-year residents of Kentucky, Michigan, Ohio, Pennsylvania, and Wisconsin when the only type of income from Indiana stems from wages, tips, salary, or other compensation. See *It-40PNR Booklet (2019 Version)*, <https://www.in.gov/dor/tax-forms/indiana-state-prior-year-tax-forms/2019-individual-income-tax-forms/> (last visited September 14, 2023). Taxpayers completed Form IT-40RNR and requested a refund of the withheld Indiana county taxes. When Taxpayers returns were originally filed, the refunds were issued for tax years 2019, 2020, and 2021.

A review of Department records in February 2023 triggered the assessments currently under protest. The assessments are related to the previously refunded Indiana county taxes for tax years 2019, 2020, and 2021. Department records reflect that upon review, the Department believed that Taxpayers incorrectly filed Form IT-40RNR for tax years 2019, 2020, 2021, and 2022. As a result, Taxpayers were assessed for the first three years and their refund denied for tax year 2022.

Upon receiving the assessment notices, Taxpayers' representative immediately contacted the Department. The representative was initially advised that Taxpayers needed to file Form IT-40PNR and to provide a copy of their original returns as "replacement returns" for the affected tax years. Department records later reflect that Department personnel reviewed the information provided and determined Forms IT-40RNR were correctly filed; however, to protest the "taxability" of the any income related to the county taxes, Taxpayers were directed to file a protest.

Taxpayers correctly filed Form IT-40PNR in tax year 2013 because they were part-year residents of both Indiana and Ohio and had Indiana sourced income. Beginning in tax year 2014 and through all subsequent tax years, Taxpayers correctly filed Form IT-40RNR because they were no longer Indiana residents and had no Indiana income yet were subject to Husband's employer withholding Indiana county taxes. Considering the circumstances, Form IT-40RNR was the correct and only method for Taxpayers to document the withheld county taxes and initiate the required refunds.

In summary, Taxpayers provided sufficient documentation showing the Department's assessments were wrong and the refund denial related to tax year 2022 was incorrect under [IC 6-8.1-5-1\(c\)](#). Taxpayers' protest is sustained.

## FINDING

Taxpayers' protest is sustained.

September 26, 2023

*Finding Replaces: New*

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