

Letter of Findings: 01-20232179
Individual Income Tax
For The Year 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 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 established that he and his wife were entitled to a credit for local tax paid to another state and the Department's assessment for additional income tax was incorrect.

I. Individual Income Tax - Taxes Paid to Another State.

Authority: [IC 6-3-1-12](#); [IC 6-3-2-1](#); [IC 6-3-3-3](#); [IC 6-3.6-8-6](#); [IC 6-8.1-5-1](#); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *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); Income Tax Information Bulletin 28 (February 2022); Boone County, KY., Code of Ordinances § 110.27 (2023).

Taxpayer protests the Department's assessment of additional individual income tax.

STATEMENT OF FACTS

Taxpayer and his wife are residents of Indiana. Taxpayer works in Ohio and his wife works in Kentucky. In 2022, Taxpayer and his wife jointly filed an IT-40 Indiana income tax return. In May 2023, Taxpayer received a Notice of Proposed Assessment from the Indiana Department of Revenue ("Department") indicating that he owed additional income tax. The letter explains in pertinent part, "[The Department] adjusted the Credit for Local Tax Paid Outside Indiana based on the W-2s [Taxpayer] attached to [his] return." Taxpayer protested this assessment. An administrative hearing was held, and this Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - Taxes Paid to Another State.

DISCUSSION

The Department determined that Taxpayer owed additional income tax after adjusting his return. Taxpayer disagreed and protested the assessment. In support of his protest, Taxpayer provided copies of his W-2 and his wife's W-2 for the relevant tax year.

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 the Department's claim for 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.* Consequently, a taxpayer must provide documentation explaining and supporting that the Department's position is wrong. See *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). 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\(b\)](#). Pursuant to [IC 6-3-1-12](#) a resident is, "any individual who was domiciled in this state during the taxable year." Thus, "Full-year Indiana residents must report all income that is reported for federal income tax purposes on their Indiana individual income tax return (Form IT-40). **This includes all income, even if it is derived from sources outside Indiana.**" Income Tax Information Bulletin #28 20220223 Ind. Reg. 045220044NRA. (**Emphasis added**).

Indiana does afford credit to taxpayers who are Indiana residents who have paid taxes to other states. [IC 6-3-3-3](#) provides:

"Whenever a resident person has become liable for tax to another state upon all or any part of the person's income for a taxable year derived from sources without this state and subject to taxation under [IC 6-3-2](#), the amount of tax paid by the person to the other state shall be credited against the amount of the tax payable by the person. Such credit shall be allowed upon the production to the department of satisfactory evidence of the fact of such payment. . ."

As it pertains to local income taxes, [IC 6-3.6-8-6](#) states:

"[I]f for a particular taxable year a local taxpayer is liable for an income tax imposed by a county, city, town, or other local governmental entity outside Indiana, that local taxpayer is entitled to a credit against the tax liability imposed under this article for the same year."

Taxpayer and his wife are Indiana residents employed in other states. Taxpayer's wife is employed in Boone County, Kentucky, which imposes a "Mental Health Tax" on individuals who work within the county. Boone County Code of Ordinances provides:

[E]very employee. . . engaged in occupation, business, trade, profession, or other activity within the county shall pay to the county an occupational license tax for the privilege of engaging in the activities which license fee shall be measured by .0015 of:

- (1) All wages and compensation paid or payable in the county for work done or services performed or rendered in the county by every resident and nonresident who is an employee.

...

No employee shall have over \$25 withheld from his or her salary, wages, or commissions in a one year period.

Boone County, KY., Code of Ordinances § 110.27 (2023).

Taxpayer's wife's W-2 reflects that, during 2022, she was employed in Boone County, Kentucky, and was subject to the Mental Health Tax at the maximum amount of \$25. When Taxpayer and his wife filed their 2022 Individual Indiana income tax return, they reported credits for local taxes paid outside Indiana, including a credit for the \$25 Mental Health Tax. Upon review, the Department adjusted the credits to exclude credit for the Mental Health Tax. This was incorrect. Taxpayer was entitled to claim a credit for the Mental Health Tax pursuant to [IC 6-3.6-8-6](#) and therefore did not owe the Department additional income tax.

FINDING

Taxpayer's protest is sustained.

December 12, 2023

Replaces Finding Document at: New

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