

**Letter of Findings: 01-20231456**  
**Indiana Individual Income Tax**  
**For the Year 2019**

**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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 protested the Indiana Department of Revenue's proposed assessment of additional Indiana individual income tax for the year 2019. Individual was able to establish that she was a non-responsible spouse, and thus not responsible for her spouse's portion of the tax liability.

### ISSUE

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

**Authority:** [IC 6-3-2-1](#); [IC 6-3-1-3.5](#); [IC 6-3-4-2](#); [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).

Taxpayer protested the proposed assessment of additional Indiana state income tax for tax year 2019.

### STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") issued to Taxpayer a Notice of Proposed Assessment ("Notice") for additional Indiana state income tax for the tax year 2019. Taxpayer filed a Protest Submission Form ("Form") protesting the Department's proposed assessment. On the Form, Taxpayer checked the box for an administrative hearing. A telephone hearing was held. Additional facts will be provided as necessary below.

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

### DISCUSSION

In a letter dated January 26, 2023, the Department stated that a "review of your Indiana Individual Income tax for the tax period ending December 31, 2019, indicates you owe an additional \$3,119.47. This amount represents the full liability due including all assessed penalties and interest to date." The Department's letter also stated, in pertinent part, that the Department:

[H]as determined your reported federal adjusted gross income is understated based on information received from external third-party sources. The sources could include employer wage information or other income reported to the Indiana Department of Revenue by the payer, as well as information received from the Internal Revenue Service. This bill is for the state and county tax amount due for this unreported income.

The Department's letter goes on to state that a "late payment penalty has been assessed" and that "[a] penalty has been assessed for underpayment of quarterly estimated income tax payments." The letter also notes that "[i]nterest on all unpaid taxes is calculated beginning on the due date of the return or payment and ending on the date the base tax liability is paid in full."

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in [IC 6-8.1-5-1](#)(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment'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." See also *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). Consequently, a taxpayer is required to provide

documentation explaining and supporting his or her challenge that the Department's position is wrong. 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).

Indiana imposes an adjusted gross income tax on all residents. [IC 6-3-2-1\(a\)](#). The Indiana Code also addresses when a taxpayer is a resident of Indiana "for a period of less than the taxpayer's entire taxable year[.]" [IC 6-3-1-3.5\(a\)\(9\)](#); see also [IC 6-3-2-1\(b\)](#). Taxpayer's Indiana income is determined by starting with the federal adjusted gross income and making certain adjustments. [IC 6-3-1-3.5\(a\)](#).

Turning to Taxpayer's argument, she states in relevant part regarding the Department's Notice:

This is a mistake concerning [the amount] I owe [of] \$3,119.47, taxes for the year of 2019. I completed all documentation and entered the correct information. I have included W-2, 1040, Injured Spouse information, as well as documents from the IRS confirming my amount.

Taxpayer references being an "Injured Spouse" for tax purposes. [IC 6-3-4-2\(d\)](#) states (**emphasis added**):

Where a joint return is made by husband and wife pursuant to the Internal Revenue Code, a joint return shall be made pursuant to this article. **Where a joint return is filed by a husband and wife hereunder, one spouse shall have no liability for the tax imposed by this article upon the income of the other spouse.**

Taxpayer's use of the term "Injured Spouse" likely comes from the Department's webpage, which has a section titled "Non-or Partially-Responsible Spouse/Injured Spouse Information." (See <https://www.in.gov/dor/individual-income-taxes/non-or-partially-responsible-spouseinjured-spouse-information/>)(last visited on December 14, 2023). That webpage states in part, "Spouses are liable for the information on tax returns filed jointly and any taxes owed" but that "[i]n limited cases, a spouse may have no or only partial responsibility and can request their part of any tax refund due is not used to pay the other spouse's Indiana tax liability or toward other liabilities where the tax refund may be diverted or offset." The webpage directs a taxpayer that wants to submit such a claim to file a form Schedule IN-40PA.

In Taxpayer's case, the Department's records indicate the following:

- Taxpayer and her spouse filed a married joint return for Indiana for the tax year 2019.
- Taxpayer applied for the non-responsible spouse consideration for 2019.
- Taxpayer's application was reviewed by the Department and approved.
- The Department later received third party information regarding the federal adjusted gross income ("AGI") for Taxpayer and her spouse.
- Based upon this, the Department adjusted Taxpayer's return to reflect that federal AGI amount.

Given Taxpayer's non-responsible spouse application for 2019 being approved, the adjustment based upon the 2019 federal AGI should not have occurred. Taxpayer, for Indiana tax year 2019, is only responsible for her portion of taxable income, not her spouse's.

Taxpayer has met the burden imposed under [IC 6-8.1-5-1\(c\)](#) of proving the proposed assessment is incorrect. Taxpayer has also met her burden as it pertains to any penalty, interest, or other fees, as applicable.

## FINDING

Taxpayer's protest is sustained.

January 30, 2024

*Replaces Finding Document at: New*

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