DEPARTMENT OF STATE REVENUE

01-20231756.LOF

Letter of Findings: 01-20231756
Income Tax
For The Year 2021

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 provided sufficient information to establish that a portion of the assessed penalties should be abated.

ISSUE

I. Tax Administration - Penalty Assessment.

Authority: IC 6-3-2-1; IC 6-3-2-2; IC 6-3-4-3; IC 6-3-4-4.1; IC 6-8.1-5-1; IC 6-8.1-6-1; IC 6-8.1-10-1; IC 6-8.1-10-2.1; *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 protests the assessment of additional income tax, penalty, and interest.

STATEMENT OF FACTS

Taxpayer is an Indiana resident. Taxpayer is employed by "Company" and maintains a leadership position in Company's management team. Taxpayer owned a small percentage of Company, and in August 2021, he learned Company was "being shopped for sale." In November 2021, Taxpayer learned the selling price for Company along with his accompanying share of the proceeds. The sale was finalized in early December 2021. Taxpayer requested the necessary tax documentation related to the sale from Company; however, Taxpayer did not receive the documents until September 2022. Due to the delay, Taxpayer requested, and received, extensions for filing both his federal and state filing individual income tax returns for tax year 2021.

Taxpayer filed his tax year 2021 Indiana return in October 2022 and remitted payment for taxes owed. In November 2022, the Indiana Department of Revenue ("Department") issued a Notice of Proposed Assessment for additional income tax, an underpayment of estimated tax penalty, a late payment penalty, and interest. Taxpayer paid the additional income tax assessment and interest but protested the penalty assessments. An administrative hearing was held. This Letter of Findings results. Additional facts will be provided as necessary.

I. Tax Administration - Penalty Assessment.

DISCUSSION

The Department assessed additional income tax and associated penalties and interest to Taxpayer for tax year 2021. Taxpayer argues the filing of his 2021 return was delayed due to the late receipt of documents from Company related to Company's sale, which was out of his control. Taxpayer remitted payment for the assessed income tax and accumulated interest but requests abatement of the assessed penalties.

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 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. 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 6-3-4-3 requires returns to be filed on "the 15th day of the fourth month following the close of the tax year." This section also provides that if an individual's due date for filing a federal income tax return is extended by the Internal Revenue Service, the Department may extend the Indiana due date to "reflect the due date permitted for the federal income tax return." *Id*. If a taxpayer receives an extension for filing the person's federal income tax return, the Indiana deadline is extended the same period plus thirty days. IC 6-8.1-6-1(c)(1). Finally, if April 15 falls on a Saturday, Sunday, or legal holiday, the due date is moved to the next business day. IC 6-8.1-6-2 (effective to December 31, 2022).

When a person obtains an extension under IC 6-8.1-6-1, the person must pay at least ninety percent of the tax that is reasonably expected to be due on the original due date by that due date or penalties may be imposed for failure to pay. Penalties are generally imposed at a rate of ten percent of the amount of tax owed or not paid. *See* IC 6-8.1-10-2.1(b). Interest accrues in the manner prescribed under IC 6-8.1-10-1.

Finally, under IC 6-3-4-4.1(b),

> Every individual who has adjusted gross income subject to the tax imposed by this article and from which tax is not withheld under the requirements of this chapter shall make a declaration of estimated tax for the taxable year. However, no such declaration shall be required if the estimated tax can reasonably be expected to be less than one thousand dollars ($1,000). In the case of an underpayment of the estimated tax as provided in Section 6654 of the Internal Revenue Code, there shall be added to the tax a penalty in the amount prescribed by IC 6-8.1-10-2.1(b).

Taxpayer explained that Company was sold to a private equity firm. Because Taxpayer maintained a small percentage of ownership in Company, he received income from the sale of Company. Despite requesting the needed tax paperwork from Company in a timely fashion, Taxpayer did not receive anything until October 3, 2022. Upon receipt, he notified his tax professional who prepared and filed his 2021 individual income tax return on October 14, 2022, and remitted payment at that time.

For tax year 2021, Monday, April 18, 2022, was the filing or extension request deadline because Washington, D.C., observed Emancipation Day on Friday, April 15. Taxpayer requested and received a federal extension for six months. This means that Taxpayer's federal return was due on October 18, 2022. His Indiana return was due thirty days after that date or November 17, 2022. Taxpayer filed his Indiana return on October 14, 2022, so the return was timely.

Pursuant to IC 6-8.1-6-1, when Taxpayer obtained an extension for filing his taxes for tax year 2021, he was required to pay at least ninety percent of the amount of taxes he expected to owe for the tax year by the original filing date. Even though he was still waiting on documentation related to the sale of Company, Taxpayer indicated he was aware of the approximate amount he would receive from the sale at the end of November 2021. This was well before he requested any extension at the federal or state level. He should have made a reasonable determination of his total tax liability owed for tax year 2021 and remitted payment of ninety percent of that amount by April 18, 2022. This action would have prevented the Department from assessing a ten percent penalty for failure to pay at least ninety percent of the taxes due for the year.

Additionally, Taxpayer was required to pay estimated taxes for the final quarter of tax year 2021. As previously noted, Taxpayer received additional income from Company's sale. Based on information submitted to the Department, no withholding taxes were collected from this amount. Taxes owed on this income exceeded the $1,000 threshold set forth in IC 6-3-4-4.1(b), so Taxpayer was required to pay estimated taxes for the fourth quarter of 2021 by January 15, 2022. *See* Estimated Tax, https://www.in.gov/dor/individual-income-taxes/payments-and-billing/estimated-tax (last visited January 4, 2023). Taxpayer's failure to pay timely estimated taxes resulted in an additional penalty assessment under IC 6-8.1-10-2.1.

To summarize, Taxpayer's individual income tax return for tax year 2021 was timely filed, and Taxpayer remitted payment when he filed the return in October 2022. However, because Taxpayer received a filing extension, he was required to remit payment for at least ninety percent of his tax liability for the year based on a reasonable calculation of taxes he would owe. Additionally, because the majority of the liability appears to be related to Company's sale and Taxpayer's increased income from that sale, Taxpayer was required to pay estimated taxes for the last quarter of tax year 2021 because withholding taxes were not collected on the sale amount (compared to withholding taxes collected related to his regular salary). The estimated payment was due by January 15, 2022. These two errors by Taxpayer resulted in the assessed penalties.

Pursuant to IC 6-8.1-10-2.1(d), if a person subject to a penalty for failing to pay a tax liability can show the failure to file a return or pay taxes owed was due to reasonable cause and not willful neglect, the Department may waive the penalty. Taxpayer requests the Department waive the assessed penalties. The Department agrees to do so in part.

A review of Taxpayer's account shows that Taxpayer has a history of compliance. Taxpayer's income was greatly increased in 2021 due to the sale of Company, which was outside of Taxpayer's direct control. This appears to be a one-time event that led to the Department's assessment. It also appears that Taxpayer was unfamiliar with the requirements of filing estimated taxes. Considering these circumstances, the Department will abate the late payment penalty. Taxpayer was unable to file his return until he received the correct information and related forms from Company. Because his late payment was due to "reasonable cause and not willful neglect," the penalty can be waived by the Department pursuant to IC 6-8.1-10-2.1(d). However, the remainder of the penalty for failing to pay estimated taxes remains. Taxpayer is reminded that in tax years when he requests an extension, he is required under Indiana law to remit payment for at least ninety percent of the taxes he believes he will owe for the year based on a reasonable calculation of his earnings for the year. The payment of estimated taxes must be made by the original due date of Taxpayer's individual income tax return.

FINDING

Taxpayer's protest is partially sustained and partially denied.

January 19, 2024

Replaces Finding Document at: New

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An html version of this document.