DEPARTMENT OF STATE REVENUE

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Letter of Findings: 08-0140
Individual State Income Tax
For the Year 2006

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ISSUE

I. Voluntary Nature of the Indiana's Adjusted Gross Income Tax.

Authority: IC § 6-8.1-11-2; *Couch v. United States*, 409 U.S. 322 (1975); *Helvering v. Mitchell*, 303 U.S. 391 (1938); *United States v. Gerads*, 999 F.2d 1255 (8th Cir. 1993); *Ficalora v. Commissioner*, 751 F.2d 85 (2d Cir. 1984); *McLaughlin v. United States*, 832 F.2d 986 (7th Cir. 1987); *McKeown v. Ott*, No. H 84-169, 1985 WL 11176 (N.D. Ind. Oct. 30, 1985); Treas. Reg. § 1.1-1(a)(1).

Attaching particular significance to the term "liable," taxpayer argues that he is not subject to Indiana income tax because he did not volunteer to become a "taxpayer."

STATEMENT OF FACTS

For clarity's sake, the "taxpayer" will be hereinafter referred to in this Letter of Findings as "petitioner." The Indiana Department of Revenue sent petitioner a "Proposed Assessment" stating that petitioner owed individual Indiana income tax. Petitioner disagreed with the notice and submitted a protest. The matter was assigned to the Hearing Officer, an administrative hearing was conducted, and this Letter of Findings results.

I. Voluntary Nature of the Indiana's Adjusted Gross Income Tax.

DISCUSSION

During the hearing, petitioner raised a number of objections to the proposed assessment. Chief among those was the contention that he was a "non-taxpayer." Petitioner reasoned that there are two categories of persons; those persons who volunteer as "taxpayers" and those who are "non-taxpayers." Petitioner admits that he had previously but unwittingly volunteered to be a "taxpayer" but that he has since rescinded that declaration and moved into the category of "non-taxpayers." Petitioner argues that only those persons who volunteer to pay taxes are subject to Indiana's adjusted gross income tax. Since he has since "unvolunteered," the Department's notice of proposed assessment is either irrelevant or invalid.

Petitioner argues that payment of Indiana individual income tax is voluntary and that he no longer volunteers to pay the tax. By implication, petitioner apparently refers to IC § 6-8.1-11-2 which states as follows:

> The general assembly makes the following findings: (3) The Indiana tax system is based largely on voluntary compliance. (4) The development of understandable tax laws and the education of taxpayers concerning the tax laws will improve *voluntary compliance* and the relationship between the state and taxpayers. (*Emphasis added*).

Petitioner's argument is without merit. In describing the nature of the federal tax system, the Court has stated that, "In assessing income taxes the Government relies primarily upon the disclosure by the taxpayer of the relevant facts. This disclosure it requires him to make in his annual return. To ensure full and honest disclosure, to discourage fraudulent attempts to evade the tax, Congress imposes sanctions. Such sanctions may confessedly be either criminal or civil." *Helvering v. Mitchell*, 303 U.S. 391, 399 (1938).

Petitioner's basic contention – that Indiana depends on its citizens' voluntary compliance with the tax laws – is undeniable. Indeed, the state also depends on its licensed drivers to drive on the right side of the road. However, that does not mean that failure to comply with the law is without predictable consequences. "Any assertion that the payment of income taxes is voluntary is without merit. It is without question that the payment of income taxes is not voluntary." *United States v. Gerads*, 999 F.2d 1255, 1256 (8th Cir. 1993). "The notion that the federal income tax is contractual or otherwise consensual in nature is not only utterly without foundation, but despite [appellant's] protestation to the contrary, has been repeatedly rejected by the courts." *McLaughlin v. United States*, 832 F.2d 986, 987 (7th Cir. 1987). "[A]rguments about who is a 'person' under the tax laws, the assertion that 'wages are not income,' and maintaining that payment of taxes is a purely voluntary function do not comport with common sense - let alone the law." *McKeown v. Ott*, No. H 84-169, 1985 WL 11176 at *2 (N.D. Ind. Oct. 30, 1985). Such arguments "have been clearly and repeatedly rejected by this and every other court to review them." *Id*. at *1.

The Supreme Court has stated that the government's entire tax system is "largely dependent upon honest self-reporting." *Couch v. United States*, 409 U.S. 322, 335 (1975). Taxpayer's bare assertion, that, based on the precatory language contained within IC § 6-8.1-11-2, he no longer "volunteers" to pay income taxes and that it is sufficient to fill in his tax returns with numerous "zeroes," does not fall within a reasonable definition of "honest self-reporting."

Petitioner's secondary argument is derivative of the first. Petitioner states that there is nothing in federal law

which makes petitioner "liable" for paying federal income tax. Petitioner concludes that because there is nothing which makes him "liable" for the federal tax, he was fully justified in reporting "zero" adjusted gross income on his federal return, carrying over that "zero" amount to his Indiana return, and concluding that he owed no Indiana income tax.

Petitioner attaches particular significance to the word "liable" but petitioner's distinction is purely semantic word play. Petitioner believes that before he can be held "liable" for federal tax or Indiana income tax, there must be a statute that specifically says that the petitioner is "liable" for the tax. This argument is without merit. As explained in Treas. Reg. § 1.1-1(a)(1), "Section 1 of the [I.R.C.] imposes an income tax on the income of every individual who is a citizen or resident of the United States...." *See Ficalora v. Commissioner*, 751 F.2d 85, 88 (2d Cir. 1984) (In responding to an appellant's argument that "[n]owhere in any of the Statute of the United States is there any section of law making any individual liable to pay a tax or excise on 'taxable income," the court found that, "Despite the appellant's contorted statutory scheme, we find it coherently and forthrightly imposed upon the appellant tax upon his income for the year 1980"). There is nothing in fact, law, or common sense which upholds the whimsical notion that a tax can be "imposed" upon a particular individual but that the individual is somehow not "liable."

The Department is disinclined to accept petitioner's assertion that has attained the status of "non-taxpayer" or that he is not "liable" for Indiana income tax.

FINDING

Taxpayer's protest is denied.

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