

## DEPARTMENT OF STATE REVENUE

01-20210074.LOF

**Letter of Findings: 01-20210074**  
**Individual Income Tax**  
**For the Tax Years 2010, 2014, and 2017**

**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 Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 sufficiently supported his claim that the Department incorrectly adjusted his adjusted gross income in 2017. Individual's refund claims for the 2010 and 2014 tax years are beyond the statute of limitations.

### ISSUES

#### I. Individual Income Tax - Taxability of Social Security Benefits.

**Authority:** IC § 6-3-1-3.5; IC § 6-8.1-3-7; IC § 6-8.1-5-1; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *IRS Publication 915* (2017); IRC § 61; IRC § 62; IRC § 86; Income Tax Information Bulletin 26 (July 2015).

Taxpayer protests a proposed assessment of individual income tax for the 2017 tax year.

#### II. Tax Administration - Statute of Limitations.

**Authority:** IC § 6-8.1-5-2; IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Medco Health Solutions Inc. v. Indiana Dept. of State Revenue*, 9 N.E.3d 263 (Ind. Tax Ct. 2014).

Taxpayer requested individual income tax refunds for the 2010 and 2014 tax years.

### STATEMENT OF FACTS

Taxpayer is an Indiana resident who filed an income tax return for 2017 and timely paid the remaining tax owed. After reviewing its records and cross-referencing with federal information maintained by the Internal Revenue Service ("IRS"), the Indiana Department of Revenue ("Department") found a discrepancy in the reported amount of Federal adjusted gross income ("FAGI"). The Department recalculated Taxpayer's liability and issued a proposed assessment for income tax, penalty, and interest. Taxpayer timely protested the proposed assessment. Taxpayer also requested a refund for 2010 and 2014 income tax. An administrative hearing was held and this decision results. Other facts will be provided as necessary.

#### I. Individual Income Tax - Taxability of Social Security Benefits.

### DISCUSSION

Taxpayer disagrees with the Department's recalculation of his 2017 individual income tax and states that his originally calculated FAGI was correct. The Department made its adjustment pursuant to its review of information exchanged with the federal government, as provided by IC § 6-8.1-3-7.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The 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." *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. Poorly developed and non-cogent arguments are subject to waiver. *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 485 n.9 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010).

Indiana defines the term adjusted gross income "as [it is] defined in Section 62 of the Internal Revenue Code" with Indiana-specific modifications. IC § 6-3-1-3.5(a). Section 62 of the Internal Revenue Code defines adjusted gross income as "gross income minus deductions." IRC § 62(a). Gross income is, in turn, defined as "all income from whatever source derived." IRC § 61(a).

IRC § 86 explains that social security benefits are taxed by the Federal government in some circumstances. IRS Publication 915 provides worksheets for a taxpayer to determine if their social security income is indeed taxable. See IRS Publication 915, available at <https://www.irs.gov/pub/irs-prior/p915--2017.pdf> (Last Visited April 19, 2021 at 11:53 AM.) Indiana, however, does not tax social security benefits. IC 6-3-1-3.5(a)(8). Income Tax Information Bulletin #26 explains what sources of income are taxable and nontaxable in Indiana:

Taxable income includes, but is not limited to, income from the following sources:

Wages	Rental income
Salaries	Farm income
Commissions	Business income
Tips	Pensions (taxable portion)
Interest	Annuities (taxable portion)
Dividends	Partnership/Shareholder income
Royalty income	Gain from sale or exchange of property

Nontaxable income includes, but is not limited to, income from the following sources:

Social Security  
Railroad retirement benefits  
Life insurance proceeds

The federal government may tax a portion of Social Security and railroad retirement benefits. Indiana allows a tax deduction for any Social Security or railroad retirement benefits included in federal adjusted gross income.

Income Tax Information Bulletin 26 (July 2015), 20150826 Ind. Reg. 045150278NRA.

As support for his position, Taxpayer provided the Department with multiple 1099 Forms showing his sources of income in the 2017 tax year. Part of this income was in the form of social security benefits. Taxpayer also provided his 2017 Form 1040 Federal tax return, which show that he did not include any of his social security benefits as taxable income on his 1040 calculation of FAGI.

Recalculating Taxpayer's federal taxable income to include taxable social security benefits resolves the FAGI discrepancy. Taxpayer incorrectly calculated FAGI on his 2017 Form 1040, which carried over to his Indiana Form IT-40 return. However, because Indiana does not tax social security benefits, Taxpayer's initially reported Indiana adjusted gross income is correct. The Department was therefore correct in making its adjustment of FAGI but it failed to include a deduction for social security benefits, which resulted in an incorrect adjustment to Indiana adjusted gross income. Because Taxpayer provided sufficient documentation to show that the Department's assessment was incorrect, he has successfully met his burden under IC § 6-8.1-5-1.

## FINDING

Taxpayer's protest is sustained.

## II. Tax Administration - Statute of Limitations.

## DISCUSSION

Taxpayer claims that he was due income tax refunds for the 2010 and 2014 tax years. To support these claims, Taxpayer provided letters from the IRS showing that adjustments were made to his Federal tax returns in each of

these tax years which resulted in additional refunds.

As a threshold issue, "when [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). Thus, all interpretations of Indiana tax law contained within this decision are entitled to deference.

The Indiana Code includes limits on both the Department and taxpayers that prevent tax modifications beyond a set period of time. The Department's ability to issue proposed assessments is limited by IC § 6-8.1-5-2. Similarly, a taxpayer's ability to seek a refund is limited by IC § 6-8.1-9-1(a), which states:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department . . . [I]n order to obtain the refund, the person must file the claim with the department within three (3) years after the later of the following:

- (1) The due date of the return.
- (2) The date of payment . . .

This was confirmed by the Indiana Tax Court in *Medco Health Solutions Inc. v. Indiana Dept. of State Revenue* when it explained:

The Department has no legal method of generating a claim for refund on its own; rather, a claim for refund can only be initiated by a taxpayer pursuant to the procedure set forth in Indiana Code § 6-8.1-9-1.

9 N.E.3d 263, 266 (Ind. Tax Ct. 2014)(citing [45 IAC 15-9-2\(b\)](#)).

Taxpayer explained at the hearing that he did not request a refund for the 2010 or 2014 tax years until he began the process of protesting the Department's proposed assessment, which is discussed above. That protest did not begin within three years of either the due date or the date of payment for Taxpayer's 2010 or 2014 returns. Therefore, the Taxpayer is statutorily prohibited from obtaining a refund for either of those tax years.

#### **FINDING**

Taxpayer's request for refund is respectfully denied.

#### **SUMMARY**

For the reasons discussed above, Taxpayer's protest is sustained regarding the 2017 tax assessment and denied regarding the 2010 and 2014 refund requests. The Department will make appropriate adjustments to its records and eliminate the existing proposed assessment.

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