

Letter of Findings: 01-20210052
Indiana Individual Income Tax
For the Tax 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 Department'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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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's income earned while he resided in Indiana was subject to Indiana income tax. Individual demonstrated that his Indiana employer withheld tax on wages paid to him and substantiated his withholding tax credit. As such, Individual was entitled to the credit, which, in turn, reduced his Indiana income tax liability.

ISSUES

I. Indiana Individual Income Tax - Burden of Proof.

Authority: IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-1-12; IC § 6-3-1-13; 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); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Schmidt v. Indiana Department of State Revenue*, 81 N.E.3d 705 (Ind. Tax Ct. 2017); [45 IAC 3.1-1-23](#).

Taxpayer protests the Department's refund denial and assessment of individual income tax for 2019.

II. Tax Administration - Underpayment and Late Penalties.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the penalties.

STATEMENT OF FACTS

Taxpayer has been an Indiana resident until August 2019. At that time, Taxpayer changed his job and relocated to the State of Illinois. Taxpayer's Indiana employer withheld income tax on wages paid to him and remitted the tax to the State of Indiana until his departure. Subsequently after Taxpayer started his new job - a month or two later - Taxpayer changed his residence to Illinois. Taxpayer's new employer withheld income tax on wages paid to him during 2019 and remitted to the State of Illinois.

In 2020, both employers issued the Form W-2, Wage and Tax Statements ("W-2s"), which documented the withholding tax credit which Taxpayer could claim when he filed his 2019 federal and state income tax returns.

Taxpayer timely filed an Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return (Form IT-40PNR) without enclosing his W-2s, claiming a refund. Several months later, Taxpayer filed an amended return (Form IT-40X), also without enclosing his W-2s, claiming that he was entitled to an additional refund.

The Indiana Department Revenue ("Department") subsequently reviewed both filings, denying the refund claim and also assessing additional income tax, interest, underpayment penalty, and late penalty because Taxpayer had additional income and also failed to substantiate his withholding tax credit, which would have been applied to reduce his tax liability.

Taxpayer protested. A hearing was held. Taxpayer subsequently provided the original W-2s from his former employer located in Indiana. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Burden of Proof.

DISCUSSION

The Department denied the refund claim and assessed additional tax because (1) Taxpayer had additional Indiana income and (2) did not substantiate his withholding tax credit, which would have reduced the tax liability when verified.

Taxpayer disagreed, stating the following, in relevant part:

I am protesting the rejection of my refund and the proposed assessment[]. The rejection of my refund claim[] that I had \$69,132 of income that was taxable to the [S]tate of Indiana for 2019. However, the W-2 (for my only employment as a resident of Indiana in 2019) shows that my income was only \$38,507. . . [T]he state records claim that . . . I paid \$0.00 in state and local taxes for 2019. . . . My W-2 shows that \$1,222.63 was withheld for state taxes, and \$746.65 was withheld for local taxes. Per my amended tax return, I am owed a refund of \$371. Therefore, I am protesting the proposed [assessment and refund denial].

Essentially, Taxpayer claimed that a portion of the wages he received from his Illinois employer while Taxpayer resided in Indiana was not subject to Indiana income tax. Thus, the issue is whether Taxpayer provided sufficient documentation to substantiate that a portion of his wages received from his Illinois employer was not subject to Indiana income tax and he has sufficient withholding tax credit to support his refund claim.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "[E]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting their challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "on 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). Indiana resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12. Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

To efficiently compute Indiana resident's state income tax, the Indiana law references the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be the taxpayer's Indiana income tax after applying certain additions and subtractions to that starting point. IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources subject to Indiana income tax, in part, as follows:

With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state;** and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.

(Emphasis added).

[45 IAC 3.1-1-23](#)(2) explains further how "residency" affects a taxpayer's income tax liability, in relevant part, as follows:

Taxpayer Moving from Indiana. Any person who, on or before the last day of the taxable year, changes his residence or domicile from Indiana to a place without Indiana, with the intent of abiding permanently without

Indiana, is subject to adjusted gross income tax on all taxable income earned while an Indiana resident. Indiana will not tax income of a taxpayer who moves from Indiana and becomes an actual domiciliary of another state or country **except that income received from Indiana sources will continue to be taxable.** . . .

(Emphasis added).

In this instance, the Department did not dispute that Taxpayer was a nonresident during 2019 and processed Taxpayer's IT-40PNR filing. However, the Department reviewed Taxpayer's IT-40PNR and IT-40X filings, determining that Taxpayer received income from both an Indiana employer and an Illinois employer while he performed his service in Indiana. As such, his income from the Indiana employer and a portion of his income from the Illinois employer were subject to Indiana income tax because the income in question would have been considered as income derived from an Indiana source pursuant to the Indiana law. Therefore, there is a rebuttable presumption that, based on the information reported, Taxpayer was responsible for Indiana income tax because Taxpayer has received "compensation for labor or services rendered within [Indiana]" under IC § 6-3-2-2(a)(4). *Cf. Schmidt v. Indiana Department of State Revenue*, 81 N.E.3d 705, 712 (Ind. Tax Ct. 2017) (explaining that the compensation the petitioner received was not Indiana source income because the "unrebutted evidence" showed that the petitioner rendered services for an Indiana company "from outside the state by telephone and did not perform any personal services while physically located in Indiana . . . as required by the plain meaning of the imposition statute").

Throughout the protest process, in addition to asserting that he had sufficient withholding tax credit, Taxpayer contended that he moved to Illinois when he started his new job in Illinois. As such, that income was not Indiana income. Taxpayer submitted his W-2s to support his protest but did not provide any verifiable records to substantiate his contention that a portion of his income received from his Illinois employer was not Indiana income.

Upon review, Taxpayer's W-2s demonstrated that his Indiana employer properly withheld income tax, including state and local, on wages paid to Taxpayer and thus Taxpayer was entitled to the tax credit withheld. However, Taxpayer failed to substantiate his contention that for 2019, he rendered all his service in Illinois when he started his new job. Thus, the Department is not able to agree that a portion of his income received from his Illinois employer was not subject to Indiana income tax.

Finally, in this instance, the Department agreed that Taxpayer was a nonresident for 2019 and only imposed Indiana income tax on "compensation for labor or services rendered within [Indiana]" under IC § 6-3-2-2(a)(4). As such, Taxpayer's income was not taxed twice and there is no double taxation under applicable federal and Indiana law. While State of Illinois may have a different income tax scheme, Taxpayer's income tax liability with that state is beyond the scope of this protest.

In short, given the totality of the circumstances, the Department agrees that Taxpayer had the tax credit as substantiated by his W-2s. However, a portion of Taxpayer's income received from his employer in Illinois prior to his relocation to Illinois during 2019 was income derived from Indiana source subject to Indiana income tax.

FINDING

Taxpayer's protest is sustained, in part, and respectfully denied, in part.

II. Tax Administration - Underpayment and Late Penalties.

DISCUSSION

Taxpayer also protested the imposition of (1) underpayment penalty for insufficient withholding tax credit and (2) late penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or

(5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department . . .

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Upon review, Taxpayer's documentation established reasonable cause as provided under [45 IAC 15-11-2](#)(c) and the Department is prepared to agree that both penalties should be abated.

FINDING

Taxpayer's protest of both penalties is sustained.

SUMMARY

For the reasons discussed above, for Issue I, Taxpayer's protest is sustained, in part, and respectfully denied, in part. As to Issue II, Taxpayers' protest is sustained. The Department will conduct a supplemental review and make appropriate adjustments as described in Issue I and Issue II accordingly.

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