

**Letter of Findings: 01-20210091
Indiana Individual Income Tax
For the Tax Years 2017 and 2018**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 was responsible for additional Indiana income tax for the 2017 and 2018 tax years because, after a cross-reference examination with the Department's records, Individual failed to substantiate her tax credit for tax paid to a county in Ohio.

ISSUE

I. Indiana Individual Income Tax - County Withholding Tax Credits.

Authority: IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-3-3; IC § 6-3.6-8-6; IC § 6-8.1-5-1; IC § 6-8.1-5-2; [45 IAC 3.1-1-76](#); *Comptroller of Maryland v. Wynne*, 135 S. Ct. 1787 (2015); *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); Income Tax Information Bulletin 28 (May 2012); Income Tax Information Bulletin 28 (November 2016); Commissioner's Directive 57 (July 2016); Income Tax Information Bulletin 115 (November 2017).

Taxpayer protests the Department's individual income tax assessments for 2017 and 2018.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who has worked in the State of Ohio. Each year, Taxpayer files an Indiana Full-Year Resident Individual Income Tax Return (Form IT-40), reporting her Indiana and local income tax and claiming a refund of overpayment. Taxpayer timely filed her IT-40 returns for 2017 and 2018 ("Tax Years at Issue"). The Indiana Department of Revenue ("Department") processed her returns and issued refunds pursuant to Taxpayer's filings.

In 2021, the Department conducted an examination of Taxpayer's filings for the Tax Years at Issue and cross-referenced information in its records. The Department found that Taxpayer's employer withheld county withholding tax for Taxpayer for the Tax Years at Issue and remitted to the county in Ohio. In turn, the Department determined that Taxpayer overstated her county withholding tax credits on her Schedule 6 for 2017 and on her Schedule 5 for 2018. The Department adjusted Taxpayer's claimed county tax credits on her Schedule 6 for those years. In other words, on the Schedule 6, the Department proceeded to recalculate the tax Taxpayer would have paid to Ohio to arrive at the amount of credit for her Indiana county income tax as permitted by the Indiana law. The Department then assessed additional tax - which included the amount previously refunded erroneously - in addition to penalty and interest as a result.

Taxpayer protested the assessments, submitting additional documentation - including copies of her "W-2 Wage and Tax Statement" for those years ("W-2s"). Taxpayer requested that the Department make its final determination without a hearing. This Letter of Findings ensures based on Taxpayer's documents and information available within the Department's records. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - County Withholding Tax Credits.

DISCUSSION

After cross-referencing the Department's records and examining Taxpayer's filings for the Tax Years at Issue, the

Department determined (1) that there was zero (\$0) county withholding tax remitted to the Department on Taxpayer's behalf, (2) that Taxpayer overstated her withholding tax credits for those years, and (3) that Taxpayer owed additional income tax based on her IT-40 returns for the Tax Years at Issue. The Department thus made "line-by-line" adjustments and assessed Taxpayer additional income tax, penalty, and interest pursuant to IC § 6-8.1-5-2.

Taxpayer disagreed, stating "The credit I take is for Local Tax paid outside of Indiana." In this instance, Taxpayer has worked for an Ohio company and her Ohio employer has withheld local county tax on wages paid to Taxpayer.

The issue is whether Taxpayer demonstrated that she correctly filed her Indiana IT-40 returns for the Tax Years at Issue and that the assessments were wrong.

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, 485 n.9 (Ind. Tax Ct. 2012).

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). To compute what is considered the resident-taxpayer's Indiana income tax, the Indiana statute refers to 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 his or her Indiana income tax after applying certain additions and subtractions to that starting point, with modifications thereafter.

In addition, Indiana has entered reciprocal agreements with several states. Under the agreed reciprocity, Indiana resident-taxpayer who earns "income consisting of salaries, wages, and commissions from states [such as, Ohio,] with which Indiana has a reciprocal tax agreement must report all such income as if it were from Indiana." [45 IAC 3.1-1-76](#). Reciprocity, however, does not apply and automatically transfer the withholding tax credits between reciprocal states. Specifically, the same regulation provides, "**Credit cannot be taken for any taxes withheld by or paid to any of these states in connection with salaries, wages, or commissions received from such states. If tax has been withheld by any of these states, a claim for refund should be filed with the state which withheld the taxes.**" *Id.* (Emphasis added).

Indiana law also permits Indiana resident-taxpayer to claim an income tax credit - not exceeding their Indiana income tax due - for the taxes he or she is required to pay to other states. IC § 6-3-3-3(a). Similarly, when the resident-taxpayer of an Indiana county is required to pay local income tax to a county of another state, the Indiana resident-taxpayer is entitled to a tax credit.

IC § 6-3.6-8-6 (in effect during the Tax Years at Issue) specifically provided:

- (a) Except as provided in subsection (b), if for a particular taxable year a local taxpayer is liable for an income tax imposed by a county, city, town, or other local governmental entity located outside Indiana, that local taxpayer is entitled to a credit against the tax liability imposed under this article for that same taxable year. **The amount of the credit equals the amount of tax imposed by the other governmental entity on income derived from sources outside Indiana and subject to the tax imposed under this article. However, the credit provided by this section may not reduce a local taxpayer's tax liability to an amount less than would have been owed if the income subject to taxation by the other governmental entity had been ignored.**
- (b) The credit provided by this section does not apply to a local taxpayer to the extent that the other governmental entity provides for a credit to the taxpayer for the amount of taxes owed under this article.
- (c) To claim the credit provided by this section, a local taxpayer must provide the department with satisfactory evidence that the taxpayer is entitled to the credit.

(Emphasis added).

To claim this tax credit, the Department accepts "[w]ithholding statements or other evidence of tax payment . . . if

no return is required to be filed with the locality outside Indiana." Income Tax Information Bulletin 28 (May 2012), 20120530 Ind. Reg. 045120250NRA (explaining further that "[t]he allowable credit is equal to the lesser of: [1] [t]he amount of income tax actually paid to a locality in another state; [2] [t]he amount of adjusted gross income taxed by the locality outside of the State of Indiana multiplied by the county rate to which the taxpayer is subject; or [3] [t]he amount of county tax due on the Indiana return); see *also* Income Tax Information Bulletin 28 (November 2016), 20161228 Ind. Reg. 045160560NRA.

Following the test established by the United States Supreme Court in *Comptroller of Maryland v. Wynne*, 135 S. Ct. 1787 (2015) and concluding that Indiana tax system satisfies the constitutional requirements, the Department's Commissioner's Directive 57 (July 2016), 20180131 Ind. Reg. 045180053NRA, further explains, in relevant part, as follows:

Indiana [] maintains symmetry in allowing credits at both the state-to-state level and the county-to-county level. Indiana does not permit out-of-state state income taxes to offset Indiana county income taxes or allow out-of-state local income taxes to offset Indiana state income taxes. In Indiana, [] each county chooses whether to impose a county-level income tax, and each county's governing bodies must independently approve both the tax and the rate

Although Indiana does not permit out-of-state state income taxes to offset local county income taxes, Indiana's tax system is internally consistent. Indiana allows both state-to-state and county-to-county credits.

See *also* Income Tax Information Bulletin 115 (November 2017), 20180131 Ind. Reg. 045180053NRA.

Accordingly, the Indiana tax system encompasses different types of tax credits which include refundable tax credits and nonrefundable tax credits. Withholding tax credits are refundable while the tax credits for tax paid to other states or counties of other states are nonrefundable. When an Indiana resident-taxpayer who works in a county of another state, which has a reciprocal agreement with Indiana (such as Cincinnati, Ohio), the Indiana resident-taxpayer must report her W-2 income from Ohio on her IT-40 return and vice versa. Only when the employer withholds and remits the withholding taxes to Indiana, is the resident-taxpayer entitled to claim the withholding tax credit on the Schedule 5 of her IT-40 return. When the employer fails to do so, the resident-taxpayer has no withholding tax credits for filing IT-40 returns purposes regardless of the source of income. Reciprocity is irrelevant in claiming the withholding tax credits.

The Indiana resident-taxpayer may also claim a tax credit for local income tax paid to a county of another state. Unlike the withholding tax credits on Schedule 5, this tax credit for income tax paid to a county of another state (claimed on the Schedule 6) is not a refundable credit. This tax credit - to the extent of "[t]he amount of county tax due on the Indiana return" - is applied against her Indiana county income tax owed. That is, if the amount of income tax the resident-taxpayer paid to a county of another state *is less* than the county income tax she would have owed under her Indiana return, the resident-taxpayer owes the amount of the difference for her Indiana county income tax. If the amount of income tax the resident-taxpayer paid to a county of another state *exceeds* the county income tax she would have owed under her Indiana return, the resident-taxpayer owes no Indiana county income tax. The resident-taxpayer receives no refund of the overpayment from Indiana on that income even when he or she has paid more tax to the county of another state.

In this instance, upon review, Taxpayer's reliance on her W-2s is misplaced. In particular, the Department determined that assuming that Taxpayer had paid local income tax to Ohio, her County income tax credit for tax paid to locality outside of Indiana would have been her wage (as the amount stated in W-2s) multiplied [0.006 percent] because Ohio has a lower tax rate. In addition, pursuant to the reciprocity, Taxpayer here, as an Indiana resident, was required to file IT-40 returns, reporting her wage income from Ohio. Taxpayer was not required to file Ohio income tax returns reporting income tax to Ohio.

The reciprocity does not apply to withholding tax credits among reciprocal states. As mentioned earlier, these withholding tax credits are state specific. Taxpayer's W-2s showed that her Ohio employer withheld and remitted state withholding taxes to Indiana, but it did not do so with regards to the local or county withholding taxes. Rather, Taxpayer's W-2s showed that her Ohio employer withheld and remitted the local taxes to the locality in Ohio. As mentioned earlier, "[c]redit cannot be taken for any taxes withheld by or paid to any of these states in connection with salaries [or] wages [] received from such states. If tax has been withheld by any of these states, a claim for refund should be filed with the state which withheld the taxes." [45 IAC 3.1-1-76](#). In other words, Indiana did not receive the claimed county or local withholding tax from her Ohio employer. Therefore, there were no county withholding tax credits available to be claimed on Taxpayer's Schedule 5 to IT-40 returns for 2018. If there

is a remedy, it is with Ohio.

As to the issue concerning her Schedule 6 to her 2017 IT-40, tax credit paid to outside of Indiana, Taxpayer did not provide any supporting documentation, including her local income tax return filed with the Ohio county or city in question, to substantiate her claimed tax credit. Therefore, the Department is not able to agree with Taxpayer that she established that she paid the local income tax to Ohio for those years, that the amount she paid was *equal to* or *exceeded* the county tax she was responsible for her Indiana county income tax, and that she was entitled to the full amount of the tax credits for both years.

Finally, it should be noted that, pursuant to IC § 6-3.5-6-23(a) and the *Wynne* decision, the Department properly computed and granted Taxpayer the tax credits, in the total amount of \$341 based on Taxpayer's W-2 Statements and her IT-40 as filed, for the county tax presumably paid to the county or city in Ohio. The \$341 tax credits represent Taxpayer's Indiana county income taxes for those years.

In short, given the totality of the circumstances, Taxpayer's supporting documentation failed to demonstrate that the proposed assessments were wrong. The Department correctly adjusted Taxpayer's IT-40 returns to comport with the records.

FINDING

Taxpayer's protest is respectfully denied.

June 1, 2021

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