DEPARTMENT OF STATE REVENUE

AUDIT-GRAM NUMBER IR-024
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ISSUE

Combined Return [FN 1] – Financial Institutions Tax

Authority: IC 6-5.5-1-18(a); IC 6-5.5-5-1; 45 IAC 17-3-2(b); 45 IAC 17-3-5

IC 6-5.5-5-1. Combined return...
(a) [A] unitary group... shall file a combined return covering all the operations of the unitary business and including all the members of the unitary business. [1990]

IC 6-5.5-1-18. "Unitary business" and "unitary group" defined [effective until January 1, 2002].
(a) ….The term "unitary group" includes those entities that are engaged in a unitary business transacted wholly or partially within Indiana.

IC 6-5.5-1-18. "Unitary business" and "unitary group" defined [effective January 1, 2002].
(a) ….The term "unitary group" includes those entities that are engaged in a unitary business transacted wholly or partially within Indiana. However, the term does not include an entity that does not transact business in Indiana.

I. GENERAL STATEMENT

Prior to January 1, 2002 all members of a unitary group were required to be included in the combined Financial Institutions Tax return. Effective January 1, 2002 only those members of the unitary group who have nexus in Indiana are to be included in the filing.

II. TAXPAYER DEFINED [FN 2]

A taxpayer is any corporation transacting the business of a financial institution in Indiana as a holding company, regulated financial corporation (bank, credit union, production credit association, Edge Act corporation), a subsidiary [FN 3] of a holding company or regulated financial corporation or any other corporation carrying on the business of a financial institution. Transacting the business of a financial institution requires that eighty (80) percent or more of the corporation's gross income be derived from:

A. Making, acquiring, selling or servicing loans or extension of credit.
B. Leasing real or personal property that is the economic equivalent of the extension of credit, i.e., financial lease.
C. Operating a credit card, debit card, charge card, or similar business.

III. TRANSACTING BUSINESS IN INDIANA

The Financial Institutions Tax utilizes an economic nexus concept rather than the usual physical presence nexus. Under IC 6-5.5-3-1 a taxpayer is considered to be transacting business within Indiana if any of the following activities are present:

A. Maintains an office in Indiana;
B. Has an employee, representative, or independent contractor conducting business in Indiana;
C. Regularly sells products or services of any kind or nature to customers of Indiana that receive the product or service in Indiana;
D. Regularly solicit business from potential customers in Indiana;
E. Regularly performs services outside of Indiana that are consumed in Indiana;
F. Regularly engages in transactions with customers in Indiana that involve intangible property and result in receipts flowing to the taxpayer from within Indiana;
G. Owns or leases tangible personal property or real property located in Indiana; or,
H. Regularly solicits and receives deposits from customers in Indiana.

IV. UNITARY GROUP – PRIOR TO JANUARY 1, 2002

For purposes of Financial Institutions Tax, a unitary group includes all members of a unitary group [FN 4]. If one member of a unitary group is conducting the business of a financial institution in Indiana, then all members of the unitary group engaged in a unitary business must file a combined return even if some of the members are not transacting business in Indiana. There should be no attempt to limit group membership to only those entities that conduct business in Indiana.

V. UNITARY GROUP – EFFECTIVE JANUARY 1, 2002

The unitary group includes those entities that are engaged in a unitary business transacted wholly or partially within Indiana. The unitary group may include **only** those members that are transacting business in Indiana.

VI. AUDIT PROCEDURE

If a combined return is required and has not been filed, all unfiled periods may be reviewed and adjustments proposed.

If any member of the required combined group has filed an income tax or financial institutions tax return in Indiana and made tax payments, the payment made will be credited against any proposed adjustment to the combined return. [FN 5]

Note, however, that credit <u>can only be given</u> for those payments made by entities on which the statute is open or under Indiana extension. Any payment made that would be out of statute at the time the audit is completed is not refundable.

[FN 1] IC 6-5.5-2-1 and IC 6-5.5-5-1 require at least two (2) taxpayer members before a combined return is required.
[FN 2] IC 6-5.5-1-17
[FN 3] IC 6-5.5-1-14 defines a subsidiary as a corporation who has 50 percent of their voting stock or net worth owned by another corporation.
[FN 4] IC 6-5.5-1-18
[FN 5] IC 6-8.1-9-1(a)