**DEPARTMENT OF STATE REVENUE**

**SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 00-0456**
**Income Tax**
**For Tax Years 1995-97**

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## ISSUE

**I. Income Tax—Partnership Distributions**

**Authority:** IC 6-2.1-2-2(a)(2); IC 6-3-2-2(a)(2); IC 6-3-8-1; IC 6-3-8-2; 45 IAC 1-1-159.1; 45 IAC 3.1-1-153

Taxpayer protests the imposition of Gross, Adjusted Gross, and Supplemental Net Income taxes on partnership distributions.

## STATEMENT OF FACTS

Taxpayer is a non-resident minority partner in a limited partnership. The partnership owns several pieces of real property in Indiana shopping malls. The Indiana Department of Revenue ("Department") issued proposed income tax assessments on partnership distributions and taxpayer protested the assessments. The Department issued a Letter of Findings ("LOF") denying the protest and taxpayer requested a rehearing. Due to new factual information, the Department granted a rehearing. Further facts will be provided as necessary.

**I. Income Tax—Partnership Distributions**

## DISCUSSION

Taxpayer protested the Department's proposed assessments and a Letter of Findings was issued denying that protest. Taxpayer requested a rehearing for the protest. The Department granted the request for rehearing in order to clear up some confusion regarding the facts in the protest. In its original protest letter, taxpayer stated that it held passive investment interests in four Real Estate Investment Trusts (REITs), and it believed that those interests should be treated as intangibles. Taxpayer believed that such intangibles were not subject to income tax since taxpayer was a non-resident with no contact with Indiana other than ownership of the REIT

interests. The LOF denied the protest on the grounds that ownership of real property, via the REITs, constituted sufficient contact to subject taxpayer to Indiana income tax.

As part of its request for rehearing, taxpayer established that it was not a member of any REIT, but rather was a minority partner in four limited partnerships which each had a REIT as the general partner. In the initial protest, taxpayer stated that its partnership interests in REITs should be treated as intangibles. Because the statutes do not specifically explain whether or not REIT interests are intangibles, the bulk of the LOF was dedicated to determining if REIT interests were intangibles or not, and whether or not taxpayer had a business situs in Indiana. Since it has now been established that taxpayer had ordinary partnership interests instead of REIT interests, this analysis is unnecessary. The partnerships were renting real property in Indiana. This gave rise to income from activity within Indiana, which is taxable gross income under IC 6-2.1-2-2(a)(2). 45 IAC 1-1-159.1 specifically explains that a corporate partner's distributive share of income from the partnership is taxable as gross income. IC 6-3-2-2(a)(2) and 45 IAC 3.1-1-153(b) and (c) explain that such income is taxable as adjusted gross income. IC 6-3-8-1 and IC 6-3-8-2(b) explain that the supplemental net income tax is imposed on the net income of all corporations except those subject to the financial institutions tax. Since taxpayer is a corporation, but is not subject to the financial institutions tax, it is subject to the supplemental net income tax.

In the rehearing, taxpayer referred to an Alabama Department of Revenue Final Order in support of its protest. As was explained to taxpayer during the rehearing, the Department is not controlled by other states' laws or departmental decisions. Taxpayer also referred to an Indiana Supreme Court case which dealt with partnership issues unrelated to taxation. Again, the initial LOF was focused on determining if taxpayer had a business situs in Indiana, and as part of the analysis referred to a partnership statute. As previously explained, since it is now established that taxpayer is receiving ordinary partnership income from Indiana business activities, such a reference to a partnership statute is unnecessary. The Indiana tax statutes and regulations are clear on the subject of partnership distributions. In this case, since it has now been established that taxpayer received ordinary partnership income from business activities in Indiana, the assessments for gross income tax, adjusted gross income tax and supplemental income tax are correct.

## FINDING

Taxpayer's protest is denied.

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