DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 96-0303 ITC
Gross Income Tax
For Tax Period: 1992 Through 1994

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department=s official position concerning a specific issue.

ISSUES

I. Gross Income Tax: Interstate Transport of Passengers
Authority: IC 6-2.1-3-3; 45 IAC 1-1-123(a).
The taxpayer protests the assessment of gross income tax on income earned by providing transportation of passengers between Indiana and Illinois.

II. Gross Income Tax: Sale of Stock
Authority: IC 6-2.1-1-2(a)(9); 45 IAC 1-1-32.
The taxpayer protests the assessment of gross income tax on income received via the sale of stock in a Tennessee corporation.

III. Gross Income Tax: Bad Debt Deduction
Authority: IC 6-2.1-4-2; IC 6-2.5-6-9; 45 IAC 1-1-52.
The taxpayer protests the disallowance of a bad debt deduction for income previously reported but not taxed.

IV. Tax Administration: Penalty
Authority: IC 6-8.1-6-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2
The taxpayer protests the assessment of a penalty.

STATEMENT OF FACTS

The taxpayer is an Indiana corporation commercially domiciled in Indiana. Taxpayer is in the business of providing public transportation and operates sedans, limousines and charter buses to that end. More facts will be presented as warranted in discussion.

I. Gross Income Tax: Interstate Transport of Passengers

DISCUSSION

For tax years ending 9/30/92 and 9/30/93, the Department assessed taxpayer for income incorrectly recorded in Taxpayer's books as "miscellaneous income"(TY 92) and "airport deliveries"(TY 93). Taxpayer had just begun a new endeavor and had not established a category in its books for the income. Taxpayer has provided documentation that this income was from charter bus transportation provided for day trips to Illinois.

The departmental regulations make clear that "income from transportation between a point in Indiana and a point outside Indiana … is not taxable." 45 IAC 1-1-123(a). Taxpayer's income from the charter bus operation falls within this exemption. Taxpayer has provided ample evidence of such at hearing, specifically a ledger detailing all trips made and the income generated by these trips.

FINDING

The taxpayer's protest on this issue is sustained.

II. Gross Income Tax: Sale of Stock

DISCUSSION

Taxpayer owned stock in a Tennessee corporation and sold this stock in tax year ending 9/30/92. Since taxpayer reports income on an accrual basis the entire $85,000 in proceeds should have been reported for TY 92. While taxpayer did report the income, it was reported to Indiana as nontaxable income.

Taxpayer is a resident corporation and is commercially domiciled in Indiana. As such, the sale of the intangible asset is allocable to Indiana. The departmental regulations specify this at 45 IAC 1-1-32. The Indiana Code also informs taxpayer that the sale, transfer or exchange of stock is to be included in gross income. IC 6-2.1-1-2(a)(9). Taxpayer concedes that this is indeed the case.

FINDING

The taxpayer's protest of this issue is denied.

III. Gross Income Tax: Bad Debt Deduction

DISCUSSION

Given that the taxpayer, as an accrual reporter, should have reported the entire amount of income from the sale of stock on its return for TY 92, the next question is whether taxpayer should be allowed a bad debt deduction, since the purchaser defaulted on its obligation after paying only $15,000 of the $85,000.

Purchaser renegotiated the contract twice over the next two years before filing bankruptcy, never paying more than the initial $15,000. Taxpayer would receive no more income from this transaction. During the tax year ending 9/30/94, Taxpayer wrote off the balance of the debt ($70,000) on its books and records. Since taxpayer had reported the income on its federal return, taxpayer reported a bad debt deduction of $70,000 on its federal return for TY 94. Taxpayer is seeking the allowance of the same deduction on its Indiana return.

Since the Department finds that gross income tax is due and owing on the full $85,000 for TY 92, consistency demands that the taxpayer be allowed the bad debt deduction for TY 94 for the full $70,000 pursuant to 45 IAC 1-1-52.

FINDING

The taxpayer's protest on this issue is sustained.

IV. Tax Administration: Penalty

DISCUSSION

The Department can impose a ten percent (10%) negligence penalty under IC 6-8.1-10-2.1. This code section states, in pertinent part, that if " the deficiency determined by the Department was due to reasonable cause and not willful neglect, the Department shall waive the penalty."

Further, 45 IAC 15-11-2 states that "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."

The taxpayer must demonstrate that its actions involved the use of reasonable care, caution, or diligence, in attempting to comply with the law in order to avoid a penalty. The taxpayer has not done this with respect to its failure to include as taxable, income from the sale of stock on its Indiana return for tax year ending 9/30/92. The taxpayer's arguments and evidence do not show that the taxpayer exercised reasonable care, caution or diligence in its failure to have included the assessed tax. The law clearly requires such income to be included. See IC 6-2.1-1-2; 45 IAC 1-1-32.

FINDING

The taxpayer's protest of the penalty is denied.