DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 97-0298
Indiana Gross and Adjusted Gross Income Tax
For Tax Years 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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax: Enterprise Zone Exemption

Authority: IC 4-4-6.1-2.5, IC 6-2.1-3-32;
CNB Banchares, Inc. v. Department of State Revenue, 700 N.E.2d 616 (Ind.Tax 1999);
St. Mary's Medical Center v. State Bd. of Tax Comm'rs, 534 N.E.2d 277 (Ind.Tax 1989);
Caylor-Nickel Clinic v. Dept. of State Revenue, 569 N.E.2d 765 (Ind.Tax 1991).

Taxpayer protests the Department's disallowance of an enterprise zone gross income exemption.

II. Gross, Adjusted Gross, and Supplemental Net Income Tax: Methods Used to Compute Tax Liabilities

Authority: IC 6-8.1-5-1, IC 6-8.1-9-1;
45 IAC 15-9-29(d), 45 IAC 15-11-3

Taxpayer protests the Department's calculation of taxpayer's Indiana income tax liabilities.

Tax Administration: Negligence Penalty

Authority: IC 6-8-10-2.1;
45 IAC 15-11-2

Taxpayer protests the assessment of a negligence penalty.

STATEMENT OF FACTS

Taxpayer operates a waste management facility in Indiana. Taxpayer's primary business activities involve the collection (removal and site cleanup), transport, treatment, recycling, and disposal of hazardous and non-hazardous waste materials. Taxpayer analyzes incoming waste materials to determine the optimal method for treatment and disposal. Treated waste may be

recycled as scrap, disposed of in landfills, or transferred to permitted facilities where such waste can be used as recycled fuel. Taxpayer also provides restoration and remediation services.

For the years subject to audit (1992 – 1994), taxpayer failed to file Indiana income tax returns. To determine taxpayer's Indiana income tax liabilities, Audit inspected relevant taxpayer documents and directed inquiries to appropriate taxpayer personnel. Audit's research resulted in proposed assessments of Indiana income tax. Taxpayer has protested these assessments.

DISCUSSION

I. Gross Income Tax: Enterprise Zone Exemption

In computing taxpayer's Indiana gross income tax liabilities, Audit, according to taxpayer, failed to exclude from taxpayer's Indiana gross receipts certain income derived from sources within an enterprise zone. Taxpayer contends Audit's decision was driven by taxpayer's failure to notify the appropriate enterprise zone board of its intent to claim the exemption.

All qualified increased enterprise zone gross income is exempt from the Indiana gross income tax. IC 6-2.1-3-32. Generally, taxpayers eligible to claim zone business incentives (including the qualified increased enterprise zone gross income exemption) "shall, by letter postmarked before June 1 of each year: (1) submit to the board and to the zone urban enterprise association…a verified summary concerning the amount of tax credits and exemptions claimed by the business in the preceding year; [and] (2) pay the amount specified in section 2(4) of this chapter to the board." IC 4-4-6.1-2.5(a). Failure to comply with these requirements may result in penalties, denial of incentives, or disqualification from further participation in the enterprise zone program. IC 4-4-6.1-2.5(d) and (e). Entitlement to the "increased enterprise zone gross income" exemption of IC 6-2.1-3-32, however, contains no such notification requirement. It is sufficient, for purposes of claiming the exemption, to show the income represented "qualified increased enterprise zone gross income." The statute requires nothing more. (Also see CNB Banchares, Inc. v. Department of State Revenue, 700 N.E.2d 616 (Ind.Tax 1999).

The taxpayer claiming an exemption, however, "has the burden of showing the terms of the exemption statute are met." St. Mary's Medical Center v. State Bd. of Tax Comm'rs, 534 N.E.2d 277, 281 (Ind.Tax 1989). Taxpayer, therefore, must show that it has, in fact, received "qualified increased enterprise zone income" as defined in IC 6-2.1-3-32. Taxpayer, though, has failed to do so.

In Caylor-Nickel Clinic v. Dept. of State Revenue, 569 N.E.2d 765 (Ind.Tax 1991), the Indiana Tax Court found that the timely filing of Form IT-20SC under IC 6-2.1-3-24.5(d) *was not* a condition precedent to obtaining the small business corporation gross income tax exemption provided for in IC 6-2.1-3-24.5(b). Along with its findings, however, the Court offered the following cautionary language:

> Finding IC 6-2.1-3-24.5(d) [timely filing of Form IT-20SC] is not a condition precedent to obtaining the exemption provided in IC 6-2.1-3-24.5(b) [the small business corporation gross income tax exemption], however, does not render the

> filing requirement meaningless and is consistent with the rule that exemption statutes are construed in favor of imposing tax. IC 6-2.1-3-24.5(d) does impose upon the taxpayer claiming exemption the burden of showing the terms of the exemption statute are met. Consequently, a taxpayer failing to meet this burden, not qualifying for exemption, is subject to assessment.

Id. at 770.

Such logic applies to this controversy as well.

FINDING

Taxpayer's protest is denied .

II. Gross, Adjusted Gross, and Supplemental Net Income Tax: Methods Used to Compute Tax Liabilities

To determine taxpayer's gross receipts for *Indiana gross income* tax purposes, Audit, pursuant to a signed projection agreement (dated 11/25/96), tallied taxpayer invoices for a three-month period. Audit segregated taxpayer's invoiced revenue for the period into revenue earned both from within and without Indiana. The percentage of Indiana sales to total sales for the three-month period was then computed. Taxpayer's annual invoice-generated revenue for each year was multiplied by this ratio to arrive at taxpayer's Indiana gross receipts.

Audit, in order to compute taxpayer's *Indiana adjusted gross income* tax liabilities for the tax period, started with taxpayer's federal income as reported on Federal Form 1120 and then made the appropriate Indiana adjustments pursuant to 45 IAC 3.1-1-5.

Taxpayer has disagreed with these results. Taxpayer explains:

> The Taxpayer did not timely file Indiana tax returns for the years at issue [1992 – 1994]. The Department of Revenue made their adjustments based upon estimates and approximations. The Taxpayer has since filed Indiana returns based upon actual information the Taxpayer has available. The Taxpayer's returns do not agree with the Department's adjustments, and the Taxpayer is therefore requesting an opportunity to reconcile the differences.

When the Department believes a taxpayer has failed to report the proper amount of tax due, pursuant to IC 6-8.1-5-1(a), "the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department…."

Returns filed by taxpayer *after* the Department has completed its income tax audit and after the Department has sent notices of deficiency to taxpayer will not serve as proxy for timely filed original returns. Taxpayer's delinquent returns, depending on context, may (if respective statutory requirements are met) represent a protest of proposed assessments under IC 6-8.1-5-1(c) or a claim for refund under IC 6-8.1-9-1(a).

To succeed as a *protest of a proposed assessment*, taxpayer's submissions must overcome the *rebuttable presumption* that "[t]he notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid." IC 6-8.1-5-1(b). To succeed as a legally cognizable *refund claim*, the claim "must set forth the amount of the refund to which the person is entitled and the *reasons* that the person is entitled to the refund." IC 6-8.1-9-1(a). That is, a valid refund claim must include (1) the amount of refund claimed; (2) a sufficiently detailed explanation of the basis of the claim such that the department may determine its correctness; (3) the tax period for which the overpayment is claimed; and (4) the year and date the overpayment was made. 45 IAC 15-9-29(d).

Taxpayer's request "to reconcile the differences" between the audit assessments resulting in deficiency notices and taxpayer's tax liabilities as represented on its delinquent returns is incomplete. Neither taxpayer's request nor subsequently filed returns provides the Department with the information necessary to determine the basis of taxpayer's protest or refund claim. Because taxpayer's submissions do not rebut the presumption that the assessments were valid, or collectively rise to the level of a refund claim, taxpayer's request to "reconcile the differences" must be denied.

FINDING

Taxpayer's protest is denied.

III. Tax Administration: Negligence Penalty

The Department may impose, in certain situations, a ten percent (10%) negligence penalty. IC 6-8-10-2.1 and 45 IAC 15-11-2. Taxpayer's failure to timely file income tax returns, generally, will result in penalty assessment. IC 6-8.1-10-2.1(a)(1). The Department, however, may waive the penalty if taxpayer can establish that its failure to file "was due to reasonable cause and not due to negligence." 45 IAC 15-11-2(c). A taxpayer may demonstrate reasonable cause by showing "that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed…." *Id*. Taxpayer has failed to make such a showing.

FINDING

Taxpayer's protest is denied.

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