

**Supplemental Letter of Findings Number: 03-0488**  
**Gross Income Tax**  
**For the Year 2000**

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**ISSUE**

**I. Gross Income Tax—Consolidated Returns**

**Authority:** IC § 6-2.1-5-5

Taxpayer protests the Department decision to not include an affiliated corporation on its consolidated gross income tax return for the 2000 tax year.

**STATEMENT OF FACTS**

Taxpayer was the reporting member of a group of affiliated corporations that filed consolidated corporate income tax returns in Indiana. During the years in question, one of the affiliated corporations ("Affiliate") was not included in Taxpayer's consolidated returns. Affiliate was registered to conduct business in Indiana until August 10, 2000, when Affiliate filed with the Indiana Secretary of State for withdrawal to conduct business in Indiana.

As a result of a Department audit for the years 1998 to 2000, the Department determined that Affiliate should have been included in Taxpayer's consolidated returns for 1998 and 1999, and assessed both gross income tax and adjusted gross income tax based on Affiliate's Indiana source income. The 1998 and 1999 assessments and the protest related to Affiliate are discussed in a separate Letter of Findings.

However, for 2000 the Department determined that Affiliate should not be included in Taxpayer's consolidated returns for that year based on Affiliate's mid-year withdrawal of its registration to conduct business in Indiana. A separate assessment was issued against Affiliate, which is discussed in the same Letter of Findings as the 1998 and 1999 assessment. Taxpayer separately protested the failure to include Affiliate in Taxpayer's consolidated corporate income tax returns (as adjusted by the Department), along with an issue related to "throwback sales." The throwback issue is also discussed separately in Affiliate's and another related corporation's separate Letters of Findings and will not be discussed in this Letter of Findings.

Previously a hearing had been held in which the Department issued a Letter of Findings denying Taxpayer's protest. Taxpayer requested, and the Department granted, a rehearing. Based on the arguments presented in Taxpayer's rehearing, this Supplemental Letter of Findings results.

**I. Gross Income Tax—Consolidated Returns**

**DISCUSSION**

The issue in this protest is whether Affiliate can be included on Taxpayer's consolidated income tax returns when it is registered to do business in Indiana for only a portion of the year.

Taxpayer and Affiliate share the requisite eighty percent common ownership required under [IC 6-2.1-5-5\(a\)](#) for inclusion on a consolidated Indiana gross income tax return. A second element for allowance of Affiliate in Taxpayer's consolidated group for gross income tax is set forth in IC § 6-2.1-5-5(b) (repealed effective January 1, 2003), which states:

Corporate members of an affiliated group that are incorporated in the state of Indiana or are authorized to do business in the state of Indiana may file a consolidated gross income tax return.

Based on the statutory language defining inclusion in a consolidated group, Affiliate was authorized to conduct business in Indiana for the period prior to August 10, 2000. For that part of the year Affiliate was eligible for inclusion in Taxpayer's consolidated gross income tax return. However, Affiliate was not authorized to be included in Taxpayer's consolidated gross income tax return at the moment that Affiliate's authorization to conduct business in Indiana ceased. For the portion of the year that Affiliate was not authorized to conduct business in Indiana, Affiliate is not includible in Taxpayer's consolidated gross income tax return.

**FINDING**

Taxpayer's protest is sustained for the period prior to August 10, 2000, and denied for the period on or after August 10, 2000.

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