

Letter of Findings Number: 06-0376
Income Tax
For the Tax Years 2001, 2002, 2004

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ISSUE

I. Adjusted Gross Income Tax – Net Operating Loss Carryforward

Authority: IC § 6-8.1-5-1(b); I.R.C. § 172(b)(1)(E).

The Taxpayer protests the calculation of net operating loss carry forwards.

STATEMENT OF FACTS

The Taxpayer owns and operates theaters. The Taxpayer filed for Bankruptcy on October 11, 2001. The Bankruptcy Plan, as confirmed by the Bankruptcy Court on December 7, 2001, became effective on January 29, 2002. The Indiana Department of Revenue (Department) audited the Taxpayer for the years 2001, 2002, and 2004. As a result of this audit, the Department assessed the Taxpayer additional gross income tax for the years. The Taxpayer paid the assessment under the amnesty program. In 2006, the Taxpayer protested the computation of net operating loss carryforwards. A hearing was held. This Letter of Findings results.

I. Adjusted Gross Income Tax – Net Operating Loss Carryforward

DISCUSSION

All tax assessments are presumed to be valid. IC § 6-8.1-5-1(b). The Taxpayer bears the burden of proving that any assessment is incorrect.

The Taxpayer in 1998 and 1999 incurred net operating losses. A portion of the net operating losses consisted of Corporate Equity Reduction Interest (CERI) losses. Under I.R.C. § 172(b)(1)(E), CERI losses may only be carried forward. The Department was correct in computing the amount of losses that the Taxpayer could carry back and application of losses for carryback.

However, in determining the amount of losses carried forward and/or offset by the Taxpayer's bankruptcy, the Department effectively disallowed the CERI losses in total. The Department offset net operating losses other than the CERI losses in determining the Taxpayer's net operating losses that the Taxpayer could no longer carry forward. Further, the Department erroneously did not treat the CERI losses as losses subject to carryforward. In effect, the Taxpayer could not use a portion of its net operating losses AND could not use the CERI losses.

The Taxpayer provided an alternative calculation of its net operating loss eligible for carryforward. The Taxpayer did not present sufficient grounds to reverse a \$113,021 "correction to 2002 IT-Bankruptcy." However, with respect to all other issues raised by the Taxpayer, the Taxpayer has provided sufficient information to conclude that its computation provided with its October 6, 2006, protest letter was materially correct.

FINDING

The Taxpayer's protest to the \$113,021 "correction to 2002 IT-Bankruptcy" is respectfully denied. The remainder of the Taxpayer's protest is sustained subject to audit review.

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