

Letter of Findings Number: 07-0052
Income Tax
For Tax Year 1997

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ISSUE

I. Income Tax–Interest Calculation.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-10-1.

Taxpayer protests the date for assessment of interest on income tax.

STATEMENT OF FACTS

Taxpayer is a corporation doing business in Indiana and other states. As the result of a 2006 federal adjustment to Taxpayer's 2002 adjusted gross income, the net operating losses (NOL) carried back to 1997 were reduced. This reduction in NOL resulted in adjusted gross income tax due to Indiana for 1997. The Indiana Department of Revenue ("Department") issued a proposed assessment for adjusted gross income tax and interest for 1997. Taxpayer protests the imposition of interest from the 1997 due date of April 15, 1998, claiming that the date of interest should only be from the April 15, 2003, due date for 2002 adjusted gross income taxes which were adjusted by the federal government. Further facts will be supplied as required.

I. Income Tax–Interest Calculation.

DISCUSSION

Taxpayer protests the Department's imposition of interest from April 15, 1998. Taxpayer believes that interest should only be imposed from the 2002 return date of April 15, 2003. Taxpayer argues that there was no underpayment for 1997 until the 2002 NOL carryback was reduced, and that the 2002 return date of April 15, 2003, is the controlling date here. Taxpayer also refers to the amended returns and refunds for 1997 which were the result of the aforementioned NOL carryback. The Department notes that, under IC § 6-8.1-5-1(c), the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made.

The Department refers to IC § 6-8.1-10-1, which states:

- (a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.
 - (b) *The interest for a failure described in subsection (a) is the adjusted rate established by the commissioner under subsection (c), from the due date for payment.* The interest applies to:
 - (1) the full amount of the unpaid tax due if the person failed to file the return;
 - (2) the amount of the tax that is not paid, if the person filed the return but failed to pay the full amount of tax shown on the return; or
 - (3) the amount of the deficiency.
 - (c) The commissioner shall establish an adjusted rate of interest for a failure described in subsection (a) and for an excess tax payment on or before November 1 of each year. For purposes of subsection (b), the adjusted rate of interest shall be the percentage rounded to the nearest whole number that equals two (2) percentage points above the average investment yield on state money for the state's previous fiscal year, excluding pension fund investments, as determined by the treasurer of state on or before October 1 of each year and reported to the commissioner. For purposes of [IC 6-8.1-9-2\(c\)](#), the adjusted rate of interest for an excess tax payment must be the same as the adjusted rate of interest determined under this subsection for a failure described in subsection (a). The adjusted rates of interest established under this subsection shall take effect on January 1 of the immediately succeeding year.
 - (d) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.
 - (e) Except as provided by [IC 6-8.1-3-17\(c\)](#) and [IC 6-8.1-5-2](#), the department may not waive the interest imposed under this section.
 - (f) Subsections (a) through (c) do not apply to a motor carrier fuel tax return.
- (Emphasis added.)*

In this case, Taxpayer had 1997 adjusted gross income upon which tax was due. The due date for payment for 1997 adjusted gross income tax was April 15, 1998. While Taxpayer is correct that the proposed assessment was generated as the result of the federal adjustment to Taxpayer's 2002 NOL, this is not the relevant date for calculating interest. The 1997 liabilities were due on April 15, 1998. Therefore, per IC § 6-8.1-10-1(b), the date interest is calculated from is April 15, 1998. The fact that Taxpayer incorrectly claimed a NOL at a later date is not addressed in IC § 6-8.1-10-1. Taxpayer has not met the burden imposed by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

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