

Letter of Findings: 07-0055
Indiana Corporate Income Tax
For 2004, 2005, 2006

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ISSUE

I. Audit Adjustment – Corporate Income Tax.

Authority: IC § 6-8.1-5-1(a); IC § 6-8.1-5-1(b); IC § 6-8.1-5-4(a).

Taxpayer protests the Department of Revenue's decision assessing corporate income tax based upon the "best information available."

STATEMENT OF FACTS

Taxpayer is an Indiana corporation in the business of renting trucks. The Department of Revenue (Department) conducted an audit review of taxpayer's business records. The audit found that taxpayer had failed to file corporate income tax returns for 2003, 2004, and 2005. During the course of the audit, taxpayer was asked to provide records and documentation necessary to determine any potential tax liability. According to the audit report, "Taxpayer... failed to respond to the audits (sic) requests and supply the required records and documentation." In the absence of the requested records, the Department estimated taxpayer's net income based upon sales tax returns, withholding tax returns, and the "Almanac of Business and Industrial Financial Ratios." As a result of that review, the Department concluded that taxpayer owed corporate income tax for 2004, 2005, and 2006.

During December 2006, taxpayer submitted a protest promising to supply a "detailed protest within sixty... days." Taxpayer failed to provide the information and asked for repeated extensions of time in which to submit the information. The matter was eventually assigned to the Hearing Officer and a hearing was scheduled for February 2008. Taxpayer sought a postponement of the hearing, but the Department – after an approximately one-year delay – declined the opportunity. An administrative hearing was conducted, and this Letter of Findings results.

I. Audit Adjustment – Corporate Income Tax.

DISCUSSION

Taxpayer has submitted one income tax return for 2004. Taxpayer believes that the 2004 return – along with a belated 2003 return – demonstrates that it did not earn taxable income during the years at issue.

IC § 6-8.1-5-1(a), authorizes the Department, if it reasonably believes that a taxpayer has not reported the proper amount of tax due, to make a proposed assessment of unpaid tax on the basis of the best information available to the department.

If the department reasonably believes that a person has not reported the proper amount of tax due, 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. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest.

Each taxpayer is required to maintain records sufficient to determine the amount of tax due. IC § 6-8.1-5-4(a) reads as follows:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine that tax, including invoices, register tapes, receipts, and canceled checks.

The initial audit determination of taxpayer's liabilities arrives with a presumption of correctness. IC § 6-8.1-5-1(b) states that "[t]he notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Taxpayer failed to maintain or provide the records necessary for the audit to verify taxpayer's corporate income tax liabilities as required under IC § 6-8.1-5-4(a). There is nothing to indicate that the 2004, 2005, or 2006 tax assessments were based upon faulty, incomplete information or that the Department erred in relying on the "best information available" at the time the audit was conducted.

Nonetheless, taxpayer has provided a belated 2004 return purporting to establish that taxpayer was "in a loss position." In reviewing the 2004 return, the Department is unable to agree that taxpayer has met its burden of demonstrating that the 2004, 2005, and 2006 assessments are incorrect. The proffered 2004 return lacks supporting documentation. As such, the return is simply a bare assertion that it does not owe 2004 income tax. However, the Department is prepared to agree that the 2004 return justifies requesting that the audit division review the return and any supporting documentation that the taxpayer is able to provide. By virtue of the 2004

return, taxpayer has raised a legitimate question of whether or not the audit's determination of taxpayer's 2004 taxable sales is overstated.

However, taxpayer is placed on notice that the audit division will provide one, single opportunity for taxpayer to provide the supporting documentation and to permit the audit division to review that material. If taxpayer is unable or unwilling to provide the information at the time it is requested to do so, the existing assessment will stand; no further review will be considered.

FINDING

Taxpayer's protest of the 2004 corporate income tax assessment is sustained subject to audit verification. Taxpayer's protest of the 2005 and 2006 assessment is denied.

Posted: 04/30/2008 by Legislative Services Agency

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