

Letter of Findings Numbers: 07-0246; 07-0247
Income Tax
For Tax Years 1996-1999, 2001-2004

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I. Income Tax–Economic Development for a Growing Economy (EDGE) Credits.

Authority: IC § 6-3.1-13-1, *et. seq.*; IC § 6-3.1-13-18; IC § 6-3.1-13-22; IC § 6-8.1-1-6; IC § 6-8.1-5.

Taxpayer protests the assessment of corporate income tax for tax years prior to 2003.

II. Tax Administration–Interest Assessment.

Authority: IC § 6-3.1-13-22; IC § 6-8.1-10-1.

Taxpayer protests the assessment of interest in addition to base tax amounts.

STATEMENT OF FACTS

Taxpayer is a corporation with principal headquarters outside Indiana. In 1999, the State of Indiana and a predecessor corporation with a facility in Indiana (Predecessor Corporation) entered into an Economic Development for a Growing Economy (EDGE) Tax Credit Agreement (Agreement). In 2000, taxpayer acquired Predecessor Corporation's Indiana facility and its associated assets and operations. In connection with this acquisition, taxpayer executed an amendment to the Agreement, which provided that taxpayer assumed all benefits, credits, obligations, and responsibilities of Predecessor Corporation under the Agreement (Amendment). Pursuant to the Agreement, taxpayer must maintain operations at the project location—said facility of Predecessor Corporation—for the twenty-year period specified in the Agreement, which began in January 1996. In exchange, the EDGE Board (Board) awarded taxpayer a credit against its income tax liability for each tax year within the Agreement's twenty-year period. Taxpayer ceased operations in its Indiana facility in 2005. The Indiana Department of Revenue (Department) assessed corporate income tax for the 1996-1999, and 2001-2004 tax years based upon taxpayer's violation of terms of the Agreement. The amounts assessed represented the EDGE credits granted to the taxpayer for each of the subject tax years, including interest. Taxpayer protested both the Department's income tax assessment, and the assessment of interest. A hearing was held. This Letter of Findings results.

I. Income Tax–Economic Development for a Growing Economy (EDGE) Credits.

DISCUSSION

Under terms of the Agreement, Predecessor Corporation agreed to, and in fact constructed a manufacturing facility in Indiana. The Agreement permitted Predecessor Corporation to claim an EDGE credit for any one or more taxable years, up to a cumulative total of ten successive tax years. The EDGE credit amount could not exceed the incremental income tax withholdings per year attributable to the Indiana manufacturing facility's business activities. Until 2000, when taxpayer acquired Predecessor Corporation's facility and assets, Predecessor Corporation benefited from EDGE tax credits for the 1996-1999 tax years. The Amendment accompanying taxpayer's acquisition stated that "[a]ll credits and benefits of [Predecessor Corporation]... shall inure to [taxpayer][.]" Again, the Amendment also stated that "[a]ll obligations, duties and responsibilities of [Predecessor Corporation] stated in the Agreement shall be obligations, duties and responsibilities of [taxpayer][.]"

Until 2005, when taxpayer ceased operations in the Indiana facility, taxpayer benefited from the EDGE credits for the 2001-2004 tax years. Ceasing operations in the Indiana facility violated terms of the Agreement. The Agreement authorized the Director of Commerce to verify taxpayer's violation of the Agreement, notify the Department of the taxpayer's noncompliance, and request the Department issue an assessment under IC § 6-8.1-5.

Taxpayer argues that inclusion of IC § 6-8.1-5 in Paragraph 9(B) of the Agreement limits the Department's ability to assess income tax representing EDGE credits for the tax years prior to 2003:

Pursuant to [IC] 6-3.1-13-22, if the Director [of the Department of Commerce] determines that [Predecessor Corporation] is not complying with the requirements of this Agreement or of the provisions of [IC 6-3.1-13](#), the Director shall, after giving [Predecessor Corporation] an opportunity to explain the noncompliance, notify the Indiana Department of Revenue of the noncompliance and request an assessment under [IC 6-8.1-5](#).

IC § 6-8.1-5-2 provides generally for a three-year statute of limitations. Therefore, taxpayer argues, the plain language of the Agreement bars the Department's assessment of income tax against taxpayer based upon EDGE credits for the 1996-1999 and the 2001-2002 tax years. According to the taxpayer, the Department can only assess income tax based upon EDGE credits for the 2003 and 2004 tax years.

IC § 6-8.1-1-6 provides that when a specific provision of a listed tax conflicts with the general provisions of [IC](#)

[6-8.1](#), the specific provision applies. In the instance of the EDGE credit, the "clawback" provision allowing for up to twelve years to reclaim previously granted economic development credits—the specific provisions under IC § 6-3.1-13-18 and IC § 6-3.1-13-22—would control over the more general provisions of [IC 6-8.1](#). Because the Agreement grants a credit each taxable year against income tax—a listed tax—for compliance, IC § 6-3.1-13-22, and not IC § 6-8.1-5-2, controls. Therefore, contrary to taxpayer's assertions, both the Agreement and applicable statutes allow the Department's assessment of income tax based upon EDGE credits against taxpayer for noncompliance for the 1996-1999, and 2001-2004 tax years.

FINDING

For the reasons stated above, the taxpayer's protest with respect to income tax for the subject tax years is respectfully denied.

II. Tax Administration—Interest Assessment.

Taxpayer protests the Department's inclusion of interest on income tax assessments for the 1996-1999 and 2001-2004 tax years. The Department refers to IC § 6-8.1-10-1(e), which states:

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.

Therefore, the Department generally may not waive interest under IC § 6-8.1-10-1(e).

However, paragraph 9(B) of the Agreement, *supra* Section I, includes citation to IC § 6-3.1-13-22, which, until amended by P.L. 4-2005, stated:

If the director [of the department of commerce] determines that a taxpayer who has received a credit under [chapter 3.1] is not complying with the requirements of the tax credit agreement or all of the provisions of [chapter 3.1] the director shall, after giving the taxpayer an opportunity to explain the noncompliance, notify the department of commerce of the noncompliance and request an assessment. The director shall state the amount of the assessment, **which may not exceed the sum of any previously allowed credits** under [chapter 3.1]. **[emphasis added]**.

Paragraph 9(B) also includes a statement that "[t]he Department of Revenue shall notify the taxpayer of the amount of the assessment, **which may not exceed the sum of any previously allowed credits.**" **[emphasis added]**. IC § 6-3.1-13-22 and the plain language of the Agreement bar the Department from assessing interest in addition to income tax for the subject tax years.

FINDING

For the reasons stated above, the taxpayer's protest with respect to interest is sustained.

CONCLUSION

Based upon materials and information provided in taxpayer's protest and subsequent hearing, Predecessor Corporation, and, via an Amendment, taxpayer, entered into an EDGE Tax Credit Agreement. When taxpayer ceased operations at its Indiana facility, taxpayer violated the terms of the Agreement. Pursuant to the Agreement, the Department assessed income tax and interest based upon EDGE tax credits for the 1996-1999 and 2001-2004 tax years. Taxpayer protested the income tax assessment for years prior to 2003, claiming an exemption for those years based upon a three-year statute of limitations. Taxpayer also protested the Department's imposition of interest on base income tax amounts assessed.

The Department denies taxpayer's protest regarding income tax assessments for prior years, due to income tax- and EDGE credit-specific statutory provisions that override the general three-year statute of limitations. However, pursuant to an EDGE credit-specific statutory provision effective at the time of execution of the Agreement, which prohibits the inclusion of interest in income tax assessments in the event of noncompliance with the Agreement, the Department sustains taxpayer's protest regarding interest assessment.

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