DEPARTMENT OF STATE REVENUE

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Supplemental Letter of Findings Number: 07-0050
Financial Institutions Tax
For the Tax Years 2001-2002

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ISSUE

I. Financial Institutions Tax – Apportionment.

Authority: IC § 6-8.1-5-1(c); IC § 6-5.5-2-1(a); IC § 6-8.1-3-3(b); IC § 6-5.5-4-6.

The Taxpayer protests the imposition of financial institutions tax.

STATEMENT OF FACTS

The Taxpayer, a Delaware corporation organized in November 2000, is part of a network of affiliated corporations. The creation of the Taxpayer was part of a corporate restructuring in 2000. The Taxpayer was formed to perform certain financial functions for the group of related corporations that had previously been performed by the financial services business unit of the parent corporation. The parent also transferred working capital and real estate notes to the Taxpayer. The Taxpayer's revenue consists of interest income from promissory notes from the various affiliated group members. The parent corporation also receives substantial dividend payments from the Taxpayer. The Taxpayer is a holding company for Corporation "A," a Bermuda corporation organized in October 2000. For federal income tax purposes, Corporation "A" is a disregarded entity. The parent and affiliated corporations filed combined Indiana adjusted gross income tax returns for the tax years 2001-2002. Because Corporation "A" was a disregarded entity, Corporation "A's" income is reported by the Taxpayer. Since Corporation "A" is a Bermuda corporation, the Taxpayer was not included in the group's combined adjusted gross income tax return. The Department audited the group of affiliated corporations for the tax years 2001-2002. The Department assessed financial institutions tax, interest and penalty against the Taxpayer. The Taxpayer protested the assessments and a hearing was held. A Letter of Findings was issued finding that the Department properly imposed Indiana financial institutions tax on the Taxpayer's gross income rather than the portion of the Taxpayer's income attributable to Indiana. This Supplemental Letter of Findings Results.

I. Financial Institutions Tax – Apportionment.

DISCUSSION

The Taxpayer received its income from commercial loans made to affiliated corporations. The loans were used to purchase real estate or provide working capital. During the audit period, the Taxpayer was subject to financial institutions tax rather than adjusted gross income tax. The Taxpayer is not related to other corporations filing Indiana financial institutions tax. Therefore, the Taxpayer's financial institutions tax must be determined on an individual basis.

In computing the Taxpayer's Indiana financial institutions tax liability, the Department attributed all of the Taxpayer's income to Indiana. The Taxpayer protests this one hundred percent apportionment of its income to Indiana, contending that part of its income is derived from other states. Therefore, according to the Taxpayer, the Department should have imposed Indiana financial institutions tax only on the portion of the Taxpayer's income attributable to Indiana.

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

Indiana imposes a financial institutions tax at IC § 6-5.5-2-1(a) as follows:

> There is imposed on each taxpayer a franchise tax measured by the taxpayer's adjusted gross income or apportioned income for the privilege of exercising its franchise or the corporate privilege of transacting the business of a financial institution in Indiana.

Indiana provides for apportionment of the income subject to Indiana financial Institutions tax at IC § 6-5.5-2-3 as follows:

> For a taxpayer that is not filing a combined return, the taxpayer's apportioned income consists of the taxpayer's adjusted gross income for that year multiplied by the quotient of:
>
> (1) the taxpayer's total receipts attributable to transacting business in Indiana, as determined under IC 6-5.5-4; divided by
>
> (2) the taxpayer's total receipts from transacting business in all taxing jurisdictions, as determined under IC § 6-5.5-4.

IC § 6-5.5-4-6 provides statutory guidance for determining what portion of the Taxpayer's income is to be considered transacted in Indiana as opposed to in other jurisdictions as follows:

> Interest income and other receipts from commercial loans and installment obligations not secured by real or

tangible personal property must be attributed to Indiana if the proceeds of the loan are to be applied, the income and receipts are attributed to the state in which the business applied for the loan. As used in this section, "applied for" means initial inquiry (including customer assistance in preparing the loan application) or submission of a completed loan application, whichever occurs first.

Pursuant to the statute, the Taxpayer's income from commercial loans must be attributed to the state where the proceeds of the loan were applied. In other words, if the loan was made to a corporation in another state and the proceeds were used to purchase real estate located in the other state or as working capital for the business in the other state, the income from the loan must be attributed to that other state rather than Indiana. This income is not included in the numerator of the apportionment fraction used in determining the Taxpayer's income subject to the Indiana financial institutions tax pursuant to IC § 6-5.5-2-3.

FINDING

The Taxpayer's protest is sustained.

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