

**Letter of Findings: 08-0222
Adjusted Gross Income Tax
For the Tax Years 2003-2005**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Adjusted Gross Income Tax–Basis of Building.

Authority: IC § 6-8.1-5-1; I.R.C. § 62; I.R.C. § 1016; Treas. Reg. § 1.1016-3; Cooper Industries, Inc. v. Indiana Dep't of State Revenue, 673 N.E.2d 1209 (Ind. Tax Ct. 1996).

Taxpayer protests the Department's determination of the basis of the building.

II. Adjusted Gross Income Tax–Dividend.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-4; I.R.C. § 62; I.R.C. § 316; Cooper Industries, Inc. v. Indiana Dep't of State Revenue, 673 N.E.2d 1209 (Ind. Tax Ct. 1996).

Taxpayer protests the Department's determination of a dividend distribution.

STATEMENT OF FACTS

Taxpayer is an Indiana Taxpayer owning an Indiana corporation (hereafter "Indiana Corporation"). Taxpayer is also the beneficiary of an Indiana fiduciary (hereafter "Indiana Fiduciary"). Indiana Corporation leased land and a building from Indiana Fiduciary from October 3, 1996, until October 15, 2003. On October 15, 2003, the land and building were sold, pursuant to a multi-year installment agreement, for \$1,200,000 to a third party. Indiana Corporation's assets were also sold on October 15, 2003, to the third party.

Pursuant to an investigation, the Indiana Department of Revenue (Department) assessed additional adjusted gross income tax, interest, and penalty for the 2003, 2004, and 2005 tax years. The Department found that the Taxpayer had failed to report certain dividends it received from Indiana Corporation and failed to adjust the basis of the building for the "allowable" depreciation in reporting its gain from the sale of the building and land. Taxpayer protested the tax assessment. An administrative hearing was held, and this Letter of Findings results. Further facts will be supplied as necessary.

I. Adjusted Gross Income Tax–Basis of Building.

DISCUSSION

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

Taxpayer asserts that the Department erred, in calculating the basis of the building, when the Department reduced the basis for the amount of the "allowable" depreciation deductions. Taxpayer maintains that since it did not take the depreciation deductions for the years at issue, the basis should not be reduced for depreciation. Taxpayer further asserts that if an adjustment for depreciation is made, the depreciation should not start until 1996.

A. Depreciation Adjustment.

Generally, Indiana tax laws coincide with the Internal Revenue Code. Indiana adjusted gross income begins with federal adjusted gross income as defined by I.R.C. § 62. See Cooper Industries, Inc. v. Indiana Dep't of State Revenue, 673 N.E.2d 1209, 1213 (Ind. Tax Ct. 1996). The Internal Revenue Code provides an adjustment to the cost basis for the amount "**allowed as deductions** in computing taxable income under this subtitle or prior income tax laws... resulting (by reason of the deductions so allowed) in a reduction for any taxable year of the taxpayer's taxes... **but not less than the amount allowable** under this subtitle or prior income tax laws." I.R.C. § 1016(a)(2)(A)-(B) (**Emphasis Added**). Further "[i]f the taxpayer has not taken a depreciation deduction either in the taxable year or for any prior taxable year, adjustments to basis of the property for depreciation allowable shall be determined by using the straight-line method of depreciation." Treas. Reg. § 1.1016-3(a)(2)(i).

Accordingly, the cost basis of the property is adjusted for the greater of the amount of depreciation deductions actually taken by the taxpayer or the amount of depreciation deductions that were "allowable"—i.e., could have been taken by the taxpayer. Thus, Taxpayer's failure to take depreciation deductions that were "allowable" does not affect the adjustment to the basis of Taxpayer's building. Therefore, since Taxpayer did not take a depreciation deduction for the building, the cost basis of the building was adjusted by the "allowable" amount of depreciation that was determined using the straight-line method as found in Treas. Reg. § 1.1016-3(a)(2)(i).

B. Starting Year for the Depreciation Calculation.

Taxpayer further asserts that the building's depreciation should not have started in 1990. Taxpayer maintains that the building was not built until 1996. Taxpayer has provided sufficient documentation to demonstrate that the building's first depreciable year was 1996.

FINDING

In summary, Taxpayer's protest of subpart A is denied, and Taxpayer's protest of subpart B is sustained.

II. Adjusted Gross Income Tax–Dividend.

DISCUSSION

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

On initial assessment, the Department found that the Taxpayer had failed to report a \$40,700 dividend it had received from the Indiana Corporation in 2004. After selling all its assets in October of 2003, Indiana Corporation's had a cash balance at the end of the 2003 year of \$40,700. During the investigation, Taxpayer provided a May 2008 bank statement for Taxpayer's personal bank account showing a balance of over \$40,000.

Taxpayer asserts that the \$40,700 dividend was not distributed by Indiana Corporation in 2004. Taxpayer maintains that the \$40,700 was being held in an Indiana Corporation bank account to pay for potential tax liabilities and legal claims. During the course of the protest, Taxpayer provided Indiana Corporate bank statements reflecting the balance of over \$40,000 and the account information for Taxpayer's personnel bank account. Taxpayer has provided sufficient documentation to demonstrate that the dividend was not distributed to the Taxpayer until March 7, 2008. Therefore, the dividend was not distributed to Taxpayer in 2004, but was distributed to Taxpayer in 2008. While Taxpayer has shown that a dividend is not properly reportable in 2004, Taxpayer is on notice that this decision does not relieve Taxpayer of reporting the receipt of the dividend in 2008.

FINDING

Taxpayer's protest is sustained.

CONCLUSION

In summary, Taxpayer's protest of Issue I(A) is denied. Taxpayer's protests of Issue I(B) of the year for which the depreciation should start is sustained; and Taxpayer's protest in Issue II of the receipt of the \$40,700 dividend in 2004 is sustained.

Posted: 01/28/2009 by Legislative Services Agency

An [html](#) version of this document.