

**Letter of Findings: 08-0221
Indiana Corporate Income Tax
For the Tax Years 2003-2004**

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ISSUE

I. Corporate Income Tax—Imposition.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-4.

Taxpayer protests the Department's determination of the business assets' basis.

STATEMENT OF FACTS

Taxpayer operated an Indiana auction house from 1996 to 2003. On October 15, 2003, Taxpayer sold its business assets. Taxpayer on its 2003 tax return reported the selling price of the business assets as \$195,000 with the basis of the business assets sold of \$195,000, which resulted in Taxpayer reporting a taxable gain of zero from the sale of the business assets. Pursuant to an investigation of the 2003 and 2004 tax years, the Indiana Department of Revenue (Department) assessed additional adjusted gross income tax, interest, and penalty for the 2003 tax year. The Department found that the basis of the business assets sold, as determined from the balance sheet of Taxpayer's federal income tax returns, was \$6,240. Taxpayer protested the tax assessment. An administrative hearing was held, and this Letter of Findings results. Further facts will be supplied as necessary.

I. Corporate Income Tax—Imposition.

DISCUSSION

Taxpayer asserts that when Taxpayer sold the business assets, which consisted of intangibles and a kitchen, the money received from the sale was not retained by Taxpayer and was directly transferred to a "note holder." Taxpayer maintains that since Taxpayer did not retain the money from the sale or the assets that its basis should be zero as first reported.

During the course of the protest, Taxpayer provided documentation allegedly showing that a "letter of credit" was granted to Taxpayer in the amount of \$250,000. However, Taxpayer's documents only demonstrate that Taxpayer had the ability to access money and Taxpayer could take out a "draft" against the "letter of credit" at any time. Since Taxpayer has not presented any evidence of any "drafts" being taken out against this "letter of credit" with a liability being recorded in its books and records, Taxpayer failed to provide documentation that demonstrated the existence of a loan or a "note holder of a loan" attributable to Taxpayer's business.

Notwithstanding, even if Taxpayer had provided evidence of a business liability which Taxpayer repaid with the proceeds from the sale of the assets, this liability would not affect Taxpayer's basis in the assets that were sold. Since Taxpayer sold the business's assets, Taxpayer would need to provide evidence that the money it received from the liability was used to purchase the assets that were sold on October 15, 2003. Otherwise, Taxpayer's payment of an alleged outstanding liability has no effect on its taxable income resulting from the sale of the assets.

IC § 6-8.1-5-4(a) provides:

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 the tax, including invoices, register tapes, receipts, and canceled checks.

Accordingly, it is Taxpayer's responsibility to retain the documentation that supports the amounts it used to determine the tax owed. Moreover, Taxpayer did not cite any statute, regulation, or case law for the proposition that the Department is required to accept Taxpayer's assertions as to the nature of the transactions without providing the supporting documentation. 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. Since Taxpayer failed to produce documentation that demonstrates that the Department's assessment was incorrect, Taxpayer has failed to meet its burden of proof.

FINDING

Taxpayer's protest is denied.

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