

**Letter of Findings Number: 08-0551  
Income Tax  
For Tax Year 2007**

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**ISSUE**

**I. Income Tax—Individual.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-9-2.

Taxpayer protests the assessment of individual income tax.

**STATEMENT OF FACTS**

Taxpayer is an individual. As the result of a review of its records, the Indiana Department of Revenue ("Department") determined that Taxpayer owed additional income tax for the tax year 2007. The Department did not have a record of Taxpayer's 2001 Indiana income tax return. The Department did have records of Taxpayer's 2002 through 2007 Indiana income tax returns. Those returns revealed that Taxpayer had claimed a credit carry forward from 2001 which it applied in 2002. Taxpayer then claimed credit carry forwards on the 2002 through 2007 returns, applying credits from one year to the next and claiming a new credit for the following year. This resulted in credits of varying amounts each year from 2001 through 2007. The Department determined that, since the 2001 return which started the credit carry forward method was never filed, there were never any credits available to start the credit carry forward method. The result of that determination was that the credit carry forward applied to the 2002 return was unavailable, and so forth for each year, which in turn resulted in the determination that income tax for 2007 was due in the amount of the missing 2001 credit carry forward. Taxpayer protests that her late husband, a Certified Public Accountant with over forty years of accounting experience, had properly filed the 2001 return and that all relevant credit carry forwards were properly claimed. Taxpayer therefore protests that no additional income tax for 2007 is due. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

**I. Income Tax—Individual.**

**DISCUSSION**

Taxpayer protests the imposition of income tax for the tax year 2007. The Department had determined that a credit carry forward claimed on Taxpayer's 2007 return was unavailable since the Department had never received Taxpayer's 2001 return which originated a chain of credit carry forwards from 2001 to 2007. Taxpayer protests that the 2001 return was properly filed and that the credit carry forward was properly claimed. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment was made, as provided by IC § 6-8.1-5-1(c).

The credit carry-forward option is provided by IC § 6-8.1-9-2(a) which states:

If the department finds that a person has paid more tax for a taxable year than is legally due, the department shall apply the amount of the excess against any amount of that same tax that is assessed and is currently due. The department may then apply any remaining excess against any of the listed taxes that have been assessed against the person and that are currently due. If any excess remains after the department has applied the overpayment against the person's tax liabilities, the department shall either refund the amount to the person or, at the person's request, credit the amount to the person's future tax liabilities.

(Emphasis added).

As part of the protest process, Taxpayer provided documentation in support of her position that the 2001 return was properly filed and the credit carry forward was properly claimed. A review of the supplied materials shows that this documentation is sufficient to demonstrate that the 2001 return was filed in a timely manner.

Since the 2001 return was properly filed, and since the credit carry forward was properly claimed at that time, the subsequent years had that amount of credit available. The 2007 return therefore had the proper amount of credit available claimed on it. Taxpayer has met the burden of proving the proposed assessment wrong.

**FINDING**

Taxpayer's protest is sustained.

*Posted: 03/25/2009 by Legislative Services Agency*

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