

Supplemental Letter of Findings Number: 08-0255
Income Tax
For Tax Years 2004-06

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ISSUE

I. Income Tax–Individual.

Authority: IC § 6-3-1-3.5.

Taxpayer protests the reduction of net operating losses for individual income tax.

STATEMENT OF FACTS

Taxpayer is an individual who operated a business out of his residence as a sole proprietorship. Since the business was a sole proprietorship, the business income flowed through to Taxpayer's individual return. As the result of an investigation, the Indiana Department of Revenue ("Department") determined that Taxpayer had claimed some items as business expenses which were not eligible for exemption or deduction. The Department made adjustments to add these items back to Taxpayer's income for the tax years 2004, 2005, and 2006. Since Taxpayer had net operating losses ("NOLs") available for all three years, the Department's adjustments resulted in reduction of the NOLs available for future years. Taxpayer protested the Department's adjustments, claiming that the items were eligible for exemption or deduction as originally claimed. A Letter of Findings (LOF) was issued which partially sustained and partially denied Taxpayer's protest. Taxpayer requested a rehearing to address two items. The Department granted the rehearing. On the day of the hearing, Taxpayer left a voicemail message to inform the hearing officer that he would be unavailable that day due to a last minute work conflict. The message also explained that Taxpayer would contact the hearing officer to reschedule the rehearing. The hearing officer waited more than two weeks and received no further calls. Therefore, this Supplemental Letter of Findings (SLOF) was written based on the information submitted in the rehearing request. Further facts will be supplied as required.

I. Income Tax–Individual.

DISCUSSION

Taxpayer protests that two of the items which were determined to be partially taxable should be readjusted. The first item is trash collection. The second item is a truck which Taxpayer states was used exclusively for business purposes. Taxpayer believes that the net operating losses available for carry-forward after the tax years at issue should not be reduced by the amounts adjusted by the Department.

The relevant statute in determining Indiana individual income tax is IC § 6-3-1-3.5, which states in relevant part:

When used in this article, the term "adjusted gross income" shall mean the following:

(a) In the case of all individuals, "adjusted gross income" (as defined in Section 62 of the Internal Revenue Code), modified as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 62 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States.

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The first item protested is the trash collection. Taxpayer states that the trash bin, which was used for business and personal trash purposes, should be almost exclusively exempt as a business expense. Taxpayer states that the amount of personal trash which went into the bin was no more than a few small garbage bags a week, while the bin was the large type used to dispose of parts and debris associated with a satellite dish business.

Taxpayer deducted the cost of the trash bin from his Indiana individual income tax. The Department's investigation adjusted that amount by adding back an amount equal to the trash collection costs for a residence in Taxpayer's area. The reason for this was that the residence would have required a trash collection service as would any residence. The original LOF referred to this adjustment and also referred to a federal audit which allowed ten percent of the trash costs as business costs. This reference was intended to support the position that trash costs were partially taxable and partially non-taxable.

The Department takes this opportunity to clarify what was adjusted and the reason for the adjustment. The entire amount of trash collection from a business operated out of any taxpayer's residence cannot be entirely exempt unless it is on a separate account and is separately billed from the residential trash collection. In this

case, both residential and business trash were collected and billed from the same account. As stated above, any residence will require trash collection and will therefore incur residential trash collection costs. The Department's adjustment added back the amount of residential trash collection costs in Taxpayer's area. What was left of the amount originally claimed by Taxpayer was allowed as related to Taxpayer's business. The Department finds this approach logical and appropriate in the absence of any documentation to the contrary. The fact that Taxpayer did not fill the bin with residential trash is not relevant. The Department has taken this into account by only adding back the amount of trash collection costs which any residence would incur regardless of the amount of trash collected.

The second item protested by Taxpayer is a truck which Taxpayer states was used for the business. The investigation added back the Truck expenses which had been claimed by Taxpayer. The Department determined that there was insufficient documentation to establish that the truck had been used exclusively or even predominantly for business purposes. At hearing, Taxpayer explained that the truck was large, fuel inefficient, and suited to hauling the large equipment required in Taxpayer's business. The original LOF determined that there was insufficient documentation to establish the use of the truck. In the course of the requesting a rehearing, Taxpayer provided a great deal of documentation supporting his position that he had other vehicles which were used for personal reasons. This documentation also established the business use of the truck in question. Combined with the previous documentation and analysis, Taxpayer has now established that the truck was used for business purposes and the amount originally claimed was correct.

In conclusion, the trash collection costs were properly adjusted to simultaneously account for normal residential trash costs and to allow that amounts over residential costs were business related. Thanks to the additional documentation provided in the rehearing request, the truck in question will be allowed as business related. A supplemental audit will be conducted to make the adjustments sustained in the original LOF and the adjustment in this SLOF for the business-related truck. The result of those adjustments will increase the amount of NOLs available for Taxpayer to use in years after the years at issue here.

FINDING

Taxpayer's protest is sustained in part and denied in part.

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