

**Letter of Findings: 08-0246  
Indiana Corporate Income Tax  
For the Tax Year 2004**

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**ISSUE**

**I. Adjusted Gross Income Tax—Imposition.**

**Authority:** IC § 6-3-2-2.6; IC § 6-8.1-5-1; I.R.C. § 172; I.R.C. § 382.

Taxpayer protests the Department's decision to disallow certain net operating loss deductions.

**STATEMENT OF FACTS**

Taxpayer is a multi-structured manufacturing and insurance business consisting of a parent corporation ("parent") and numerous subsidiaries. For the 2004 tax year, Taxpayer filed a consolidated Indiana adjusted gross income tax return to report its parent and subsidiaries' income. Taxpayer's 2004 Indiana adjusted gross income tax return included several Form IT-20 NOLs (net operating loss), which were filled out incorrectly and with the computation of the loss sections substantially blank. The Department disallowed the net operating loss deductions and issued a proposed assessment for the 2004 tax year. The Department found that Taxpayer had reported net operating loss deductions for years in which the Department had no record of the origination of net operating losses for Taxpayer. Taxpayer protested the assessment. An administrative hearing was held, and this Letter of Findings results.

**I. Adjusted Gross Income Tax—Imposition.**

**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 maintains that the net operating loss deductions it reported on its return are from the net operating losses of two entities that it recently acquired. Taxpayer claims that it carried forward the acquired entities' net operating losses that originated in tax years that were prior to Taxpayer's ownership.

During the course of the protest, Taxpayer provided Indiana adjusted gross income tax returns for the acquired companies, Taxpayer's 2004 federal income tax return, and a schedule of the acquired companies' federal net operating loss deductions that had been subject to separate I.R.C. § 382 limitations on its federal returns. While the documentation provided by Taxpayer is sufficient to establish that it is entitled to take net operating loss deductions for these acquired entities, Taxpayer has not calculated the Indiana net operating loss deductions correctly. When Taxpayer reported the use of the Indiana net operating loss deductions from the acquired entities, Taxpayer did not limit the acquired entities' net operating losses as required by I.R.C. § 382.

A corporation's Indiana net operating loss deduction is determined under IC § 6-3-2-2.6(c), which provides a computation that starts with the "taxpayer's federal net operating loss for a taxable year as calculated under Section 172 of the Internal Revenue Code, derived from sources within Indiana and adjusted for the modifications required by [IC 6-3-1-3.5](#)." I.R.C. § 172 requires the application of net operating loss limitations for corporations that have acquired certain "built-in loss" corporations. See I.R.C. § 172(l)(2) (providing "[f]or special limitations on net operating loss carryovers in the case of a corporate change of ownership, see section 382"). Since I.R.C. § 172 incorporates the I.R.C. § 382 limitations into the computation of the federal net operating loss deduction and the federal net operating loss deduction as calculated under I.R.C. § 172 is the starting point for the Indiana net operating loss deduction, the I.R.C. § 382 limitations are incorporated into the Indiana net operating loss deduction. After the I.R.C. § 382 limitations are incorporated into the calculation to arrive at Taxpayer's federal net operating loss as required by I.R.C. § 172, the loss is modified and apportioned as provided in section 2 of this chapter to determine the loss derived from sources within Indiana. See IC § 6-3-2-2.6(c)-(d)(2).

Therefore, Taxpayer's protest is sustained in part as to the entitlement of a deduction, but is denied in part as to the amount of the deduction. The file will be returned to the audit division to incorporate the allowable net operating loss deduction.

**FINDING**

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

*Posted: 05/27/2009 by Legislative Services Agency*

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