

**Letter of Findings: 09-0154**  
**Corporate Income Tax**  
**For the Year 2003**

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**ISSUE**

**I. Corporate Adjusted Gross Income Tax – Imposition.**

**Authority:** IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-38](#).

Taxpayer protests the imposition of the corporate adjusted gross income tax.

**STATEMENT OF FACTS**

Taxpayer is an Illinois car dealership renting an office and selling cars in Indiana. Pursuant to an audit, the Indiana Department of Revenue ("Department") found that Taxpayer did not file the Indiana corporate income tax return for the 2003 tax year. Therefore, the Department assessed Taxpayer corporate income tax, interest, and penalty. Taxpayer protested the assessments. A hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

**I. Corporate Adjusted Gross Income Tax – Imposition.**

**DISCUSSION**

After an audit, the Department concluded that Taxpayer had been doing business in Indiana and apportioned Taxpayer's corporate income tax based on three factors: a property factor, a payroll factor, and a sales factor. The Department's audit further calculated Taxpayer's sales factor by examining Taxpayer's "police books," which contained 2003 sales information, including transaction dates, stock numbers, customers' names, and the amount for each of the transactions. The Department's audit then listed what would be considered Indiana sales and totaled the amount of the Indiana sales to arrive at the income tax due.

Taxpayer protested the Department's assessments. Taxpayer first claimed that, on one of the transactions, the amount which the Department's audit included was wrong. Taxpayer also claimed that some of the customers were from out of state, the cars sold to them were registered outside of Indiana, and the sales were not generated from Indiana. Additionally, Taxpayer claimed that it sold several cars at an auction place in Illinois, so these transactions were not Indiana sales.

All tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Pursuant to IC § 6-3-2-2(a)(2), Taxpayer's income from doing business in Indiana was subject to Indiana corporate income. [45 IAC 3.1-1-38](#) further states:

For apportionment purposes, a taxpayer is "doing business" in a state if it operates a business enterprise or activity in such state including, but not limited to:

- (1) Maintenance of an office or other place of business in the state
- (2) Maintenance of an inventory of merchandise or material for sale distribution, or manufacture, or consigned goods
- (3) Sale or distribution of merchandise to customers in the state directly from company-owned or operated vehicles where title to the goods passes at the time of sale or distribution
- (4) Rendering services to customers in the state
- (5) Ownership, rental or operation of a business or of property (real or personal) in the state
- (6) Acceptance of orders in the state
- (7) Any other act in such state which exceeds the mere solicitation of orders so as to give the state nexus under P.L.86-272 to tax its net income.

As stated in Regulation 6-3-2-2(b)(010) [[45 IAC 3.1-1-37](#)], corporations doing business in Indiana as well as other states are subject to the allocation and apportionment provisions of [IC 6-3-2-2\(b\)-\(n\)](#).

Indiana imposes a tax on each corporation's adjusted gross income attributable to "sources within Indiana." IC § 6-3-2-1(b). Where a corporation receives income from both Indiana and out-of-state sources, the amount of tax is determined by a three-factor apportionment established by IC § 6-3-2-2(b). That formula operates by multiplying the taxpayer's total business income by a fraction composed of a property factor, a payroll factor, and a sales factor.

The "sales factor" consists of a fraction, "the numerator of which is the total sales of the taxpayer in [Indiana] during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year." IC § 6-3-2-2(e).

In this instance, Taxpayer first claimed that, on one of the transactions, the Department's audit did not include the correct amount of that transaction. Additionally, Taxpayer argued that the customers were from out of state and the cars sold to them were registered in other states rather than in Indiana. Therefore, these sales were not generated from Indiana. Finally, Taxpayer claimed that it sold several cars at an auction place in Illinois, so they were not Indiana transactions.

To support its protest, Taxpayer submitted documentation including copies of Retail Buyer's Order ("RBO"), Odometer Disclosure Statement, and AutoCheck reports for the subject vehicle sales. Among Taxpayer's documentation, the RBOs were pre-printed blank forms. The RBOs contained information columns, such as purchaser's name, sales price, contact information, transaction date, and stock number, to be filled out by Taxpayer at the time of the transactions or in some instances afterwards. Notably, the RBOs were not pre-numbered, but, instead, Taxpayer would designate and write down a "PO3-XXX" in the column of the stock number and then date each of the copies afterwards.

Taxpayer directed the Department's attention to one specific transaction, which purportedly contained a \$10,000 discrepancy between Taxpayer's RBO and the Department's audit report. Taxpayer's RBO dated October 7, 2003 with Stock No. PO3-080 shows a sale price of \$23,000, whereas the audit report shows \$33,000.

The data in the Department's audit summary came from Taxpayer's police books. Additionally, the RBO provided by Taxpayer containing purchaser's name, address, VIN number, mileage, and sales price, which Taxpayer filled out when the transaction occurred or in some instances afterwards. But, the copy of the RBO was not pre-numbered. Taxpayer's documentation appeared to indicate that Taxpayer made a copy of this RBO, and, subsequently, wrote down PO3-080 in the Stock No. column and dated it as October 7, 2003. Although Taxpayer provided a copy of Odometer Disclosure Statement and AutoCheck report showing the car's registration history, there was no indication concerning the sales price for this specific transaction. In the absence of other reliable documentation to reconstruct the transaction and resolve the conflict in Taxpayer's own record, Taxpayer's documentation was not sufficient to substantiate its claim.

Taxpayer also claimed that its documentation showed that some of the purchasers were from out of state and the cars sold to them were registered in other states. Taxpayer argued that these sales were not generated from Indiana.

Taxpayer is mistaken. The documentation showing the purchasers were from out of state and the cars sold to them were registered outside of Indiana, did not conclusively prove that the transactions occurred outside of Indiana. Taxpayer maintained an office in Indiana and the RBOs were generated by Taxpayer's Indiana office. The out-of-state purchasers could possibly come to Taxpayer's Indiana office, complete the transactions, and take possession of the cars before returning to their home states and then registering the cars there. Had this been the case, the transactions would be Indiana sales. Thus, Taxpayer did not provide sufficient documentation to substantiate its claim.

Taxpayer further claimed that the Department's audit mistakenly listed Stock No. PO3-099 and PO3-100, when the correct ones should be PO3-098 and PO3-099. Taxpayer claimed that the above two transactions and the PO3-118 transaction took place at an Illinois auction location. Thus, Taxpayer argued that these three transactions were not sales generated from Indiana.

The Department's audit summary, in pertinent part, listed these three transactions as follows:

Date Sold	Stock Number	Customer Name	Indiana Sales
10/31/2003	PO3-099	□	\$1,820
10/30/2003	PO3-100	□	\$2,970
12/09/2003	PO3-118	□	\$4,130

According to Taxpayer, its PO3-098 recorded that the car was sold for \$1,820 on October 30, 2003, which substantially matched the information contained in the Department's audit summary regarding PO3-099. Taxpayer's documentation, including a copy of a buyer's check and the auctioneer's record, showed that Taxpayer was the seller and the car was sold for \$1,820, on October 30, 2003, at the Illinois auction location. Since Taxpayer was an Illinois corporation and this transaction occurred in Illinois, Taxpayer has provided sufficient documentation demonstrating that the PO3-099 transaction was not an Indiana sale. However, for PO3-100 and PO3-118, Taxpayer did not provide sufficient documentation to substantiate its claim.

#### FINDING

Taxpayer's protest on the assessment of the PO3-099 is sustained, but the remainder of Taxpayer's protest is respectfully denied.

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