

**Letter of Findings Number: 09-0527
Corporate Income Tax
For the Years 2003 – 2007**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Corporate Income Tax—Income Determination.

Authority: IC § 6-3-2-2.8; IC § 6-8.1-5-1; IC § 6-8.1-5-4.

Taxpayer protests the redetermination of an S corporation's income.

STATEMENT OF FACTS

Taxpayer is an S corporation doing business in Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer for sales and use taxes for the years 2006 and 2007. Consequently, the Department determined that Taxpayer underreported its income for the years 2003 – 2007, as a matter of fact, for 2003 and 2004 Taxpayer was a non-filer. Taxpayer protested the redetermination of its income. The Department conducted an administrative hearing and this Letter of Findings results.

I. Corporate Income Tax—Income Determination.

DISCUSSION

Taxpayer protests the redetermination of its income for the years 2003 – 2007. As an S corporation, Taxpayer itself is not subject to Indiana income tax under IC § 6-3-2-2.8(2); however, the additional income passes through to Taxpayer's shareholders.

Under IC § 6-8.1-5-1(b):

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

IC § 6-8.1-5-1(c) provides:

If the person has a surety bond guaranteeing payment of the tax for which the proposed assessment is made, the department shall furnish a copy of the proposed assessment to the surety. The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

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.

Taxpayer provided records and other information which it claimed showed that the tax assessments were incorrect.

Notwithstanding the volume of information provided by Taxpayer, Taxpayer's argument fails on two grounds. First, Taxpayer's information does not consist of source documents or other documents that rebut the Department's determination. Second, Taxpayer did not establish how the documentation demonstrated that the Department's determination of Taxpayer's income was erroneous. Thus, Taxpayer has not met its burden of demonstrating that the Department's determination was not correct.

Taxpayer's protest relates to BIA assessments and the determination of additional receipts determined under Letter of Findings 04-20090575. The Department correctly determined Taxpayer's gross income.

FINDING

Taxpayer's protest is denied.

Posted: 12/23/2009 by Legislative Services Agency
An [html](#) version of this document.