

Letter of Findings Number: 10-0421
Corporate Income Tax
For the Year 2008

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ISSUE

I. Corporate Income Tax—EDGE Credits.

Authority: IC § 6-3.1-13-2 et seq.; IC § 6-3.1-13-21.

Taxpayer protests the disallowance of EDGE Credits.

STATEMENT OF FACTS

Taxpayer is a corporation. A limited liability company (LLC 1) conducted business in Indiana and qualified for an Economic Development for a Growing Economy (EDGE) credit under IC § 6-3.1-13. LLC 1 was a single-member limited liability company owned entirely by another limited liability company (LLC 2). LLC 2 was owned by eleven entities, including yet another limited liability company (LLC 3). LLC 3 was a single member limited liability company owned by Taxpayer. LLC 1 and LLC 3 are disregarded entities for federal income tax purposes; LLC 2 was treated as a partnership.

Taxpayer filed its 2008 Indiana corporate income tax return claiming its proportional share of LLC 1's EDGE credit. The Indiana Department of Revenue ("Department") initially granted Taxpayer's refund of the EDGE credit. However, the Department later assessed Taxpayer to recover the refund. Taxpayer protested the assessment, the Department conducted an administrative hearing, and this Letter of Findings results.

I. Corporate Income Tax—EDGE Credits.

DISCUSSION

Taxpayer protests the imposition of corporate income tax based on the disallowance of an EDGE credit.

Indiana permits businesses meeting certain criteria are eligible for a tax credit under IC § 6-3.1-13-2 et seq. LLC 1 met the criteria and was permitted a tax credit for 2008.

For pass through entities, IC § 6-3.1-13-21 provides in relevant part:

(a) If a pass through entity does not have state income tax liability against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit equal to:

- (1) the tax credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder or partner of a pass through entity is otherwise entitled under a separate agreement under this chapter. A pass through entity and a shareholder or partner of the pass through entity may not claim more than one (1) credit under the same agreement.

The issue is whether a credit can pass through to multiple levels of past through entities. For instance if a partnership qualifying for an EDGE credit is owned equally by A, B, and C, and A is yet another partnership owned by D, E, and F (who are all taxpayers), do D, E, and F qualify for the EDGE credit?

The language of IC § 6-3.1-13-21 does not provide for the credit to only pass to one level of pass through entities. Instead, the language merely provides for a mechanism for passing the credit to an ultimate taxpayer. A proper reading of the statute is that any pass through entity which is entitled to the EDGE credit passes through the credit until an end taxpayer is reached. Thus, Taxpayer's protest is sustained.

FINDING

Taxpayer's protest is sustained.

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