DEPARTMENT OF STATE REVENUE

02-20100176.LOF

Letter of Findings: 02-20100176
Indiana Corporate Income Tax
For the Year 2006

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Corporate Income Tax – Net Operating Losses ("NOLs").

Authority: I.R.C. § 382; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dept of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayers protest the Department's disallowance of carrying over pre-acquisition NOLs, resulting in an additional assessment.

STATEMENT OF FACTS

Taxpayer, a multinational company, as well as its subsidiaries and affiliates (collectively "Taxpayers") engage in utility related services in Indiana. Taxpayers ultimately share the same parent company (Parent), an out-of-state company, which wholly or partially owns, as well as directly or indirectly controls, Taxpayers through multi-tier subsidiaries.

On February 8, 1985, the Indiana Department of Revenue ("Department") granted Taxpayers, pursuant to Taxpayers' request, the permission to file a combined Indiana Corporation Income Tax Return. From then on, Taxpayers have been filing combined returns as a group conducting a unitary business in Indiana.

On November 18, 2005, Taxpayers acquired a group of companies which also provide utility related services (the "Acquired Group") throughout the United States and internationally. The Acquired Group incurred substantial net operating losses ("NOLs") each year since 2000.

In early April 2009, Taxpayers filed an IT-20X form, Indiana Amended Corporate Income Tax Return, claiming a refund for tax year 2006 based on carryovers of NOLs incurred by the Acquired Group. Upon reviewing Taxpayers' documentation, the Department determined that Taxpayers did not have NOLs available to be carried forward. As a result, the Department assessed Taxpayers a deficiency for 2006.

Taxpayers timely protest the assessment. A hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

DISCUSSION

I. Corporate Income Tax – Net Operating Losses ("NOLs").

The Department determined that Taxpayers did not have pre-acquisition NOLs available to be carried forward and apply to their 2006 return. Taxpayers, to the contrary, asserted that the Acquired Group's pre-acquisition NOLs are available to be carried forward and they are entitled to utilize the pre-acquisition NOLs subject to I.R.C. § 382 limitation.

As a threshold issue, 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 Dept of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Pursuant to I.R.C. § 382, when an "ownership change" event occurred, the post-change corporations generally are allowed to carry over and use the pre-change NOLs. The statute also imposes conditions which limit the amount and matter of the pre-change NOLs to be carried over.

In this instance, Taxpayers maintained that the Acquired Group's pre-acquisition NOLs are available to be carried forward and they are entitled to utilize the pre-acquisition NOLs subject to I.R.C. § 382 limitation. To support their protest, Taxpayers provided a copy of the first page of the Acquired Group's last Indiana corporate income tax return which showed that the Acquired Group had a loss in 2005 before the acquisition. Taxpayers also produced two summaries to explain how Taxpayers utilized the pre-acquisition NOLs which were generated by the Acquired Group in tax years 2000 through 2005. Although Taxpayers' documentation demonstrated that the Acquired Group might have NOLs available to be carried over subject to I.R.C. § 382 limitation, Taxpayers failed to substantiate that they properly computed and applied the pre-acquisition NOLs in their amended 2006 return. Taxpayers, therefore, are instructed to promptly provide additional documentation, if needed, upon request of the Department's Audit Division to support their carryovers of the Acquired Group's pre-acquisition NOLs.

In short, pending audit verification, Taxpayers' protest is sustained to the extent that the Acquired Group had NOLs available to be carried over subject to I.R.C. § 382 limitation. Taxpayers must promptly provide additional documentation within ten (10) business days upon request of the Department's Audit Division to support their carryovers of the Acquired Group's pre-acquisition NOLs, including schedules.

FINDING

Pending audit verification, Taxpayers' protest is sustained to the extent that the Acquired Group had NOLs available to be carried over subject to I.R.C. § 382 limitation. Taxpayers must promptly provide additional documentation within ten (10) business days upon request of the Department's Audit Division to support their carryovers of the Acquired Group's pre-acquisition NOLs.

Posted: 03/23/2011 by Legislative Services Agency
An html version of this document.