

**Letter of Findings Number: 04-20110538**  
**Adjusted Gross Income Tax**  
**For Tax Years 2006-08**

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**ISSUE**

**I. Adjusted Gross Income Tax–Net Operating Losses.**

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

Taxpayer protests the reduction of net operating losses.

**STATEMENT OF FACTS**

Taxpayer is a business with operations in Indiana, across the country, and in foreign nations. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer's adjusted gross income tax ("AGIT") returns for the tax years 2007 and 2008 did not fairly reflect its Indiana income. The Department therefore reduced Taxpayer's available net operating losses ("NOLs"), but did not entirely eliminate those NOLs. No proposed assessments were made. Only reduction of Indiana NOLs were made. Taxpayer protests those NOL reductions. An administrative hearing was held and this Letter of Findings ("LOF") results. Further facts will be supplied as required.

**I. Adjusted Gross Income Tax–Net Operating Losses.**

**DISCUSSION**

Taxpayer protests the Department's determination to reduce NOLs for the tax years 2007 and 2008. The Department based its determination on the basis that the returns which Taxpayer filed for those years did not fairly reflect Taxpayer's Indiana income. Taxpayer offers several reasons why it believes that the returns do fairly reflect its Indiana income as filed. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The adjusted gross income tax is imposed under IC § 6-3-2-1, which states:

- (a) Each taxable year, a tax at the rate of three and four-tenths percent (3.4 [percent]) of adjusted gross income is imposed upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person.
- (b) Except as provided in section 1.5 of this chapter, each taxable year, a tax at the rate of eight and five-tenths percent (8.5 [percent]) of adjusted gross income is imposed on that part of the adjusted gross income derived from sources within Indiana of every corporation.

Also of relevance is IC § 6-3-2-2, which states in relevant parts:

- (a) With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:
  - (1) income from real or tangible personal property located in this state;
  - (2) income from doing business in this state;
  - (3) income from a trade or profession conducted in this state;
  - (4) compensation for labor or services rendered within this state; and
  - (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter.

...

(i) If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) separate accounting;
- (2) the exclusion of any one (1) or more of the factors;
- (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or
- (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

....

Taxpayer states that it does not question the Department's authority to make adjustments to Taxpayer's Indiana AGIT, but rather it questions the Department's reasoning to make adjustments. Taxpayer states that it had been audited by the Department for the years 2000 through 2002 which concerned the same issue under protest in this LOF. Taxpayer states that it went through the protest process and that the Letter of Findings (LOF

02-20060067, the reasoning of which is hereby incorporated into this LOF) in that case denied the protest, but that the Department and Taxpayer reached a settlement agreement which covered those protest years of 2000-02, plus the years of 2004-06 for which Taxpayer had been conducting its business in the same manner as the protest years. This LOF only mentions the settlement agreement because it is the heart of Taxpayer's protest in the instant case.

In the instant protest, Taxpayer states that it would be equitable for the Department to follow the same terms as in the settlement agreement for the years under protest. The Department notes that the settlement agreement limited itself to the years 2000 through 2002 and 2004 through 2006, and that in the instant case the Department did not make any changes to the years 2006. The only changes were made to the NOL calculations for the subsequent years of 2007 and 2008. As explained at the hearing, it is beyond the scope of a Letter of Findings to answer Taxpayer's question. Rather, the protest process is a taxpayer's opportunity to present its reasoning and supporting documentation behind its protest of a particular proposed assessment.

In conclusion, Taxpayer has protested that the Department should follow the same settlement guidelines it agreed to for 2000-02 and 2004-06. The Department notes that each tax year stands on its own merits and that the settlement agreement terms only applied to one year (2006) of the current audit period. The Department followed the terms of the settlement agreement for 2006 and then considered the other years (2007 and 2008) as it would any years for any taxpayer. A Letter of Findings is not the forum for addressing Taxpayer's arguments of equity.

**FINDING**

Taxpayer's protest is denied.

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