

**Letter of Findings 02-20120471**  
**Corporate Income Tax**  
**For the Years 2007, 2008, 2009, and 2010**

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**ISSUE**

**I. Homeowners Association – Corporate Income Tax.**

**Authority:** IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); I.R.C § 528(d).

Taxpayer argues that it is not required to pay Indiana corporate income tax for the years at issue.

**STATEMENT OF FACTS**

Taxpayer is an Indiana homeowners association which was – according to Taxpayer – a "non-profit domestic corporation" – from 2007 through 2011. At the conclusion of 2011, the Taxpayer was involuntarily dissolved by the Indiana Secretary of State for failure to file a "Business Entity Report." Upon application for reinstatement, the Indiana Department of Revenue ("Department") requested that Taxpayer submit Indiana corporate tax returns. As filed, the Department disallowed certain claimed expenses and issued proposed assessments of Indiana corporate income tax. Taxpayer disagreed with the assessments and submitted a protest to that effect. An administrative hearing was conducted and this Letter of Findings results.

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**DISCUSSION**

Taxpayer reported income on its tax returns but offset that income by claiming expenses for "common grounds and assoc[iation] welfare." The Department disallowed the claimed expenses.

Taxpayer argues that the assessment is simply the result of its own error in filing the returns. Taxpayer argues that it had no taxable "income" for the years at issue and that the proposed assessment is attributable to its own errors on the Indiana returns.

In response to the proposed assessment, Taxpayer submitted amended Indiana returns showing "zero" federal taxable income for each of the years at issue. In addition, Taxpayer submitted corresponding federal returns which do indeed show "zero" federal taxable income for each year.

Taxpayer asks that the Department simply process the amended ("corrected") returns and adjust its state tax liability to reflect those corrected returns.

As with any protest, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "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." Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

Taxpayer's argument necessarily rests on establishing that it has "zero" federal taxable income. The authority for that assertion is found at I.R.C § 528(d) which states in relevant part:

Homeowners association taxable income defined.

- (1) Taxable income defined.--For purposes of this section, the homeowners association taxable income of any organization for any taxable year is an amount equal to the excess (if any) of
  - (A) the gross income for the taxable year (excluding any exempt function income), over
  - (B) the deductions allowed by this chapter which are directly connected with the production of the gross income (excluding exempt function income), computed with the modifications provided in paragraph (2).

In addition to the Indiana amended returns and the corresponding federal returns, Taxpayer supplied copies of financial statements purporting to establish that it correctly reported income and expenses on its federal returns.

Taxpayer has met its burden of establishing that the proposed assessment was erroneous and that the Indiana amended returns correctly reflect the amount of taxable income reported on the federal returns.

**FINDING**

Taxpayer's protest is sustained.

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