

Letter of Findings: 02-20120675; 02-20130082; 02-20130078
Corporate Income Tax
For the Years 2001 and 2002

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ISSUE

I. Consolidated Return – Gross Income Tax.

Authority: IC § 6-2.1-4-6; IC § 6-2.1-5-5; 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); Ruff v. Charter Behavioral Health System of Northwest Indiana, Inc., 699 N.E.2d 1171, 1176 (Ind. Ct. App. 1998); [45 IAC 1.1-4-5](#); [45 IAC 1.1-5-3](#).

Taxpayers argues that the Department of Revenue erred when it determined that they – three related business entities – were not entitled to report their income on a consolidated basis for gross income tax purposes.

STATEMENT OF FACTS

This Letter of Findings addresses protests filed by three related entities ("Incorporated," "Manufacturing," and "Components"). Taxpayers are Indiana commercial entities in the business of manufacturing and selling vehicles and vehicle components. Hereinafter they are referred to as "Taxpayers."

Taxpayers were previously audited for Indiana gross and adjusted gross income tax purposes. That previous audit determined that two of the entities were conducting business in Indiana sufficient to impose gross income and adjusted gross income tax purposes. The audit assessed additional tax. Taxpayers disagreed and submitted protests to that effect. Letters of Findings and Supplemental Letters of Finding were issued denying the protests. Taxpayers entered into a 2009 Settlement Agreement in which the Department and Taxpayers agreed that two of Taxpayers' affected entities "had sufficient contacts with Indiana to be subject to Indiana gross income tax, adjusted gross income tax, or supplemental net income tax."

The Department of Revenue ("Department") conducted subsequent audit reviews of the Taxpayers' returns. The audits were completed in 2012. The audits found that because two of Taxpayers' entities had withdrawn their registration with the Secretary of State to conduct business in Indiana, the entities could not be included in consolidated return.

Taxpayers disagree stating that the 2009 Settlement Agreement permitted the Taxpayers to file consolidated returns. Taxpayers submitted protests challenging the assessment of additional gross income tax. An administrative hearing was conducted by telephone. This consolidated Letter of Findings results.

I. Consolidated Return – Gross Income Tax.

DISCUSSION

A. Issue:

Taxpayers argue that they are entitled to file a single, consolidated income tax return for gross income tax purposes. Taxpayers maintain that the 2009 Settlement Agreement precludes the Department's position to the contrary.

The Department's audit reports state that the 2009 Settlement Agreement addressed only the "Nexus Issue" and did not touch on the question of whether or not Taxpayers were entitled to file separate or consolidated tax returns.

Taxpayers' representative cites to Departmental regulation, [45 IAC 1.1-4-5](#), as central to the issue at hand. The regulation – since repealed – states:

- (a) Except as provided in subsections (b) and (c), an affiliated group of corporations, as defined in [IC 6-2.1-5-5](#) is entitled to a deduction from the gross income reported on the consolidated return. The amount of the deduction is the total gross income received from transactions between the members of the group.
- (b) The deduction provided by subsection (a) does not apply to gross income received because of the dissolution of a member of the affiliated group. Also the deduction does not apply to gross income derived from sources outside Indiana. Nor does the deduction apply to gross income derived from an affiliate not qualifying to be included in the consolidated filing.... See IC § 6-2.1-4-6 (repealed January 1, 2003).

Taxpayers do not make reference, but [45 IAC 1.1-5-3](#) sets out the prerequisites for filing a consolidated return. In part, the regulation states;

- (a) An affiliated group, as defined, may file a consolidated gross income tax return. To be included in the consolidated filing, a member of the group must be incorporated in the state of Indiana or authorized to do business in the state of Indiana on or before the due date of the annual return, including valid extensions.

(b) As used in subsection (a), "authorized to do business in Indiana," means that

(1) a foreign corporation has applied for and been granted a certificate of authority to transact business in Indiana the appropriate statute; and

(2) the authority has not been withdrawn or revoked. See IC § 6-2.1-5-5 (repealed January 1, 2003).

The Department's audit stated that [Taxpayers] "were not registered to do business in the state of Indiana. Therefore, they could not be included in the consolidated return filed for [Taxpayers'] gross income tax per [45 IAC 1.1-5-3](#) consolidated return. In the prior audit, they were treated separately for gross income tax and [Taxpayers] paid the tax according to the agreed amounts in the [2009] settlement agreement. When [Taxpayers] presented the tax due schedule for 2001 through 2006 for settlement, [Taxpayers] did not include the separate gross income tax due for [Taxpayers]. The gross income tax was in effect for 2001 and 2002 and the amount due under this act should have been in the tax due calculations."

The issue is whether the affected entities are entitled to file a consolidated return allowing the Taxpayers eliminate intercompany transactions under [45 IAC 1.1-4-5](#).

B. Burden of Proof:

As a threshold issue, it is the Taxpayers' 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).

C. Settlement Agreement:

The settlement agreement states that, "The principal issue in the Lawsuits was whether [Taxpayers] had sufficient contacts with Indiana to be subject to Indiana gross income tax, adjusted gross income tax, or supplemental net income tax (collectively, 'income taxes') this issue is referred to herein as the 'Nexus Issue.'"

The agreement permits the Department to make future adjustments to the Taxpayers' liability.

Nothing herein shall preclude the Department from making adjustments to the liability of the Taxpayers or any of their affiliates for income taxes for Taxable Years 2001-2006 with respect to issues or matters other than the Nexus issue; provided however that any such adjustment shall be subject to the applicable statute of limitations provided by law, the Taxpayers and their affiliates shall be entitled to exercise their rights to protest any such adjustments pursuant to the applicable statutes. The starting point for calculating any such adjustments shall reflect the inclusion of ["Components" and "Incorporated"] in the Indiana consolidated returns filed by the Taxpayers and the Included Affiliates."

Insofar as Taxpayers' right to claim a refund, the agreement provides:

Nothing herein shall preclude the Taxpayers or any of their affiliates from filing claims for refund of income taxes for Taxable Years 2001-2006 with respect to issues or matters other than the Nexus Issue; provided, however that any such claim for refund shall be subject to the applicable statute of limitations provided by law. (Emphasis added).

Notwithstanding the agreement's specific intention to address whether Taxpayers "had sufficient contacts with Indiana to be subject to Indiana gross income tax..." the agreement also states that the starting point for calculating any such adjustments, shall reflect the inclusion of ["Components" and "Incorporated"] in the Indiana consolidated returns...." The rule is long held that "ambiguities in a contract are to be strictly construed against the party who employed the language and who prepared the contract." *Ruff v. Charter Behavioral Health System of Northwest Indiana, Inc.*, 699 N.E.2d 1171, 1176 (Ind. Ct. App. 1998). However, in this case, the agreement is plain on its face. Taxpayers are entitled to file a consolidated gross income tax return.

The Audit Division is requested to review the audit adjustments and to make whatever adjustments it deems appropriate consistent with this Letter of Findings.

FINDING

Taxpayers' protest is sustained.

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