

**Letter of Findings: 18-20130175**  
**Financial Institutions Tax**  
**For the Year 2011**

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**ISSUE**

**I. Financial Institutions Tax – "Other Deductions"**

**Authority:** IC § 6-3-1-20; IC § 6-3-1-21; IC § 6-5.5-1-2(a)(2)(B); IC § 6-5.5-1-12; IC § 6-5.5-1-12, 13; IC § 6-5.5-2-3; IC § 6-5.5-2-4; 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).

Taxpayer argues that the Department of Revenue erred when it disallowed "other deductions" on Taxpayer's 2011 Financial Institutions Tax return.

**STATEMENT OF FACTS**

Taxpayer is a Financial Institution which submitted its 2011 Financial Institutions Tax ("FIT") return. The Department of Revenue ("Department") prepared to conduct a "routine desk examination" of the return and notified Taxpayer to that effect in a letter dated October 2012.

The letter indicated that the Department "cannot allow the entry on line 18 of the FIT20" and requested from Taxpayer a "breakdown as to what deductions are being claimed." The October letter stated if the "breakdown" was not received, the Department would "issue a liability based on disallowing the deduction claimed on line 18...."

Taxpayer responded by means of a November 2012 letter which purported to provide a "detailed schedule" of Taxpayer's "Other Deductions."

The Department disallowed the claimed deductions and issued a notice of "Proposed Assessment" of additional FIT. Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted by telephone, and this Letter of Findings results.

**I. Financial Institutions Tax – "Other Deductions"**

**DISCUSSION**

The FIT is imposed on both "nonresident taxpayers" and "resident taxpayers" transacting business within this state. IC § 6-5.5-1-12, 13. The statute defines a "nonresident taxpayer" as "a taxpayer that (1) is transacting business within Indiana as provided in [IC 6-5.5-3](#); and (2) has its commercial domicile outside Indiana." IC § 6-5.5-1-12. A taxpayer, not filing a combined return, determines its FIT liability based on the taxpayer's adjusted gross income "multiplied by the quotient of... the taxpayer's total receipts attributable to transacting business in Indiana, as determined under [IC 6-5.5-4](#); divided by... the taxpayer's total receipts attributable to transacting business in all taxing jurisdictions as determined under [IC 6-5.5-4](#)." IC § 6-5.5-2-3. In contrast, a taxpayer filing a combined return determines its FIT liability based on its apportioned income consisting of the taxpayer's "(1) the aggregate adjusted gross income, from whatever source derived, of the members of the unitary group; multiplied by... the quotient of... all the receipts of the taxpayer members of the unitary group that are attributable to transacting business in Indiana; divided by... the receipts of all the members of the unitary group from transacting business in all taxing jurisdictions." IC § 6-5.5-2-4.

Taxpayer argues that it was entitled to exclude from its gross income, money received from sources outside the United States and money classified as "non-business income."

As a threshold issue, 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." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

**A. Foreign Source Income.**

Taxpayer justifies the first claimed deduction as follows:

Financial institution taxpayers in Indiana may deduct income that is derived from sources outside the U.S. as defined by the Internal Revenue Code, pursuant to Indiana Code § 6-5.5-1-2(a)(2)(B).

The provision to which Taxpayer refers states:

(2) Subtract the following amounts:

(A) Income that the United States Constitution or any statute of the United States prohibits from being used to measure the tax imposed by this chapter.

(B) Income that is derived from sources outside the United States, as defined by the Internal Revenue Code.

Taxpayer provided "Schedule C" from its corresponding 2011 federal income tax return. In particular, Taxpayer cites to lines 13 and 14. Line 13 references "Dividends from foreign corporations not included on lines 3, 6, 7, 8, 11, or 12." Line 14 references "Income from controlled foreign corporations under subpart F..."

Insofar as Taxpayer deducted income "derived from sources outside the U.S. as defined by the Internal Revenue Code...." pursuant to IC § 6-5.5-1-2(a)(2)(B), Taxpayer is correct.

**B. "Non-business Income."**

Taxpayer explains its secondary deductions as follows:

Indiana divides income into business income, which is subject to formula apportionment and non-business income, which is subject to allocation. Business income arises from transactions and activity in the regular course of the taxpayer's trade or business and nonbusiness income is all income other than business income.

As authority, Taxpayer cites to IC § 6-3-1-20 and IC § 6-3-1-21.

In its own circumstances, Taxpayer explains that it receives dividends which it classifies as "nonbusiness income" and that this dividend income should be allocated to Taxpayer's Connecticut commercial domicile.

The Department is unable to accept Taxpayer's secondary argument. Taxpayer cites to a business/non-business income distinction which is peculiar to Indiana adjusted gross income tax scheme and is irrelevant in determining Taxpayer's FIT. In this respect, Taxpayer's secondary argument must be rejected.

**FINDING**

Taxpayer's protest is sustained in part and denied in part; to the extent that Taxpayer obtained income from sources outside the United States pursuant to IC § 6-5.5-1-2(a)(2)(B), Taxpayer's protest is sustained subject to audit review; in all other respects, Taxpayer's protest is respectfully denied.

*Posted: 07/31/2013 by Legislative Services Agency*

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