

**Letter of Findings: 02-20120400**  
**Corporate Income Tax**  
**For the Years 2007, 2008, 2009**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

**ISSUE**

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

**Authority:** IC § 6-3-2-2.6; IC § 6-8.1-5-1; [45 IAC 3.1-1-9](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012).

Taxpayer protests the reduction of claimed net operating losses and the resulting imposition of adjusted gross income tax.

**STATEMENT OF FACTS**

Taxpayer is an out-of-state corporation with Indiana operations. Taxpayer manufactures a variety of audio, video, communications, and information technology products for both consumer and professional markets. Taxpayer also conducts a wide range of entertainment-based businesses.

As the result of an audit of the tax years 2007, 2008, and 2009, the Indiana Department of Revenue ("Department") determined that Taxpayer had incorrectly carried back net operating losses ("NOLs") to claim a deduction on its 2007 Indiana consolidated income tax return. The Department then determined that Taxpayer had additional Indiana adjusted gross income tax ("AGIT") due for the tax year 2007. The Department therefore issued proposed assessments for AGIT and interest for the tax period ending on March 31, 2008, representing Taxpayer's 2007 tax year. The Department did not impose assessments for 2008 or 2009, but only adjusted the NOL calculations for those years to determine the amount of NOLs available to be applied to the tax years at issue. Taxpayer protests the Department's disallowance of Taxpayer's carryback of NOLs. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

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

**DISCUSSION**

The Department's audit included a review of Taxpayer's federal income tax returns. For federal income tax purposes, Taxpayer carried forward its net operating losses from its 2007 tax year to its 2008 federal income tax return. Based upon Taxpayer's treatment of its 2007 NOLs for federal income tax purposes, the Department carried forward those losses for Indiana income tax purposes, as well.

Further review of the Taxpayer's federal returns shows that Taxpayer carried forward its net operating losses in its 2009 tax year to its 2010 federal income tax return. Similar to the treatment for 2008, Indiana carried forward Taxpayer's 2009 losses for Indiana income tax purposes.

In the Department's audit report, the auditor cites to [45 IAC 3.1-1-9\(5\)](#), stating that:

[T]axpayers must irrevocably elect, by the due date of the annual return (including extensions of time for filing) for the tax year in which the loss is sustained, the same carryback and carryforward treatment of the loss for Adjusted Gross Income Tax purposes as was elected for Federal tax purposes.

Taxpayer argues that, when it filed its Indiana form IT-20NOL for the 2009 tax year, it did not choose to forego its ability to carry back losses stated in Taxpayer's 2009 income tax return; that it did not make the election on the IT-20NOL to waive the carry back of the net operating loss deduction.

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 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).

IC § 6-3-2-2.6(b) provides that:

Corporations and nonresident persons are entitled to a net operating loss deduction. The amount of the deduction taken in a taxable year may not exceed the taxpayer's unused Indiana net operating losses carried over to that year. A taxpayer is not entitled to carryback any net operating losses after December 31, 2011.

During the administrative hearing, Taxpayer provided copies of its federal income tax returns for the subject Tax Years. However, Taxpayer did not provide any additional documents or other supporting materials to contradict the Department's treatment of Taxpayer's NOLs for Indiana income tax purposes for the 2008 and 2009 tax years. Taxpayer has also failed to provide evidence sufficient to rebut the Department's assessment for the 2007 tax year. Therefore, Taxpayer's protest regarding the Department's treatment of Taxpayer's net operating losses is respectfully denied.

#### **FINDING**

Taxpayer's protest is respectfully denied.

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