

**Letter of Findings: 02-20140405
Corporate Income Tax
For the Year 2007**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Corporation was required to timely amend its corporate income tax return and pay the tax due, if any, after an audit adjustment of the Internal Revenue Service was received.

ISSUE

I. Corporate Income Tax - Imposition.

Authority: I.R.C. § 63; IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-8.1-5-1; 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); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Indiana Dep't of State Rev. v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); [45 IAC 3.1-1-94](#).

Taxpayer protests the Department's proposed assessment.

STATEMENT OF FACTS

Taxpayer is a corporation operating a gas station, a convenience store, and a self-service laundry facility at the same location in Indiana. The Indiana Department of Revenue ("Department") conducted a corporate income tax audit of Taxpayer's business records.

Pursuant to the audit, the Department found that Taxpayer was audited by the Internal Revenue Service ("IRS") for federal income tax for the 2007 tax year ("Tax Year at Issue"). The IRS income tax audit resulted in an increase to Taxpayer's federal taxable income ("RAR adjustment"). The Department also found that Taxpayer failed to timely amend its Indiana corporate income tax return for the Tax Year at Issue to report the RAR adjustment. Thus, applying the RAR adjustment, the Department audit assessed additional Indiana income tax, interest, and penalty.

Taxpayer protested, stating that "an amount was paid to the Indiana Department of Revenue as a result of the changes made to the 2007 income tax audit." An administrative hearing was held. This Letter of Findings ("LOF") ensues. Additional facts will be provided as necessary.

I. Corporate Income Tax - Imposition.

DISCUSSION

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). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); see also Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Also, "all statutes are presumptively constitutional." Indiana Dep't of State Rev. v. Caterpillar, Inc., 15 N.E.3d 579, 587 (Ind. 2014) (citing UACC Midwest, Inc. v. Indiana Dep't of State Rev. 629 N.E.2d 1295, 1299 (Ind. Tax Ct. 1994)). When an agency is charged with enforcing a statute, the jurisprudence

defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Caterpillar, Inc.*, 15 N.E.3d at 583.

Indiana imposes a tax on every corporation's adjusted gross income derived from sources within Indiana. IC § 6-3-2-1(b). To compute the income subject to Indiana corporate income tax, Indiana adopts a multistep process to calculate a corporate taxpayer's taxable Indiana adjusted gross income. *Caterpillar, Inc.*, 15 N.E.3d at 581. The federal law requires taxpayers to report and pay their federal income tax when their gross income exceeds a certain amount. For state income tax purposes, the presumption is that the taxpayers properly and correctly file their federal income tax returns. The Indiana statute refers to the Internal Revenue Code to efficiently and effectively compute what is considered the taxpayers' Indiana income tax. That is, IC § 6-3-1-3.5(b) simply provides the starting point to determine a corporate taxpayer's taxable income, stating that the term "adjusted gross income" shall mean, "In the case of corporations the same as 'taxable income' (as defined in Section 63 of the Internal Revenue Code) adjusted as follows"

In determining the taxpayer's Indiana adjusted gross income, Indiana first refers to I.R.C. § 63 as the beginning point. When the taxpayer federal taxable income is modified, voluntarily or otherwise, it must timely amend its return, reporting the modification to the Department for state income tax purposes. [45 IAC 3.1-1-94](#) specifically mandates,

All taxpayers, except resident individuals, are required to file a notice with the Department within 120 days after a modification of a Federal income tax return or a modification of Federal income tax liability explaining the modification. For individual taxpayers, Form IT-40X must be used for this purpose. Taxpayers other than individuals should use the proper annual income tax return, and should mark it "amended."

In this instance, Taxpayer was audited by the IRS. The RAR adjustment for the Tax Year at Issue resulted in additional federal taxable income. While the additional federal taxable income is subject to federal income tax, this taxable income is also subject to Indiana income tax. Taxpayer failed to timely report the additional federal taxable income to the Department when the RAR adjustment was received.

During the protest, Taxpayer claimed that it had paid the Indiana income tax due "as a result of the changes made to the 2007 income tax audit." Taxpayer however did not provide any documentation to substantiate this payment. Nor did the Department have any records receiving this payment. The Department thus is not able to agree that Taxpayer met its burden of proof.

FINDING

Taxpayer's protest is denied.

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