

DEPARTMENT OF STATE REVENUE

02-20160454.LOF

Letter of Findings Number: 02-20160454
Corporate Income Tax
For Tax Years 2012-13

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Business did not produce documentation supporting its position that the income from certain sales was not subject to Indiana income tax. Therefore, the Department's proposed assessments for income tax stand as correct.

ISSUE

I. Corporate Income Tax—Imposition.

Authority: IC § 6-3-2-2; IC § 6-8.1-5-1; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Chrome Deposit Corp. v. Indiana Dept. of State Revenue, 557 N.E.2d 1110 (Ind. Tax 1990).

Taxpayer protests the imposition of income tax on some of its activities.

STATEMENT OF FACTS

Taxpayer is a business in the anodizing industry with activities in Indiana. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had under-reported its Indiana corporate income tax for the tax years 2012 and 2013. The Department therefore issued proposed assessments for corporate income tax, penalties, and interest for those years. Taxpayer protested a portion of those assessments. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Corporate Income Tax—Imposition.

DISCUSSION

Taxpayer protests the imposition of corporate income tax for the tax years 2012 and 2013. Taxpayer states that the sales factor used by the Department in conducting its income tax calculations was incorrect since Taxpayer provided tangible personal property ("TPP") along with the services it provided to its customers. Taxpayer believes that this provision of TPP means that it is an industrial processor who ships some of the processed TPP to other states and that the income from those transactions should be considered income in the state of delivery.

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 Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[w]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Indiana income tax is established under IC § 6-3-2-2, which states in relevant parts:

(a) With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state; and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.

Income from a pass through entity shall be characterized in a manner consistent with the income's characterization for federal income tax purposes and shall be considered Indiana source income as if the person, corporation, or pass through entity that received the income had directly engaged in the income producing activity. Income that is derived from one (1) pass through entity and is considered to pass through to another pass through entity does not change these characteristics or attribution provisions. In the case of nonbusiness income described in subsection (g), only so much of such income as is allocated to this state under the provisions of subsections (h) through (k) shall be deemed to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within the state of Indiana. In the case of compensation of a team member (as defined in section 2.7 of this chapter), only the portion of income determined to be Indiana income under section 2.7 of this chapter is considered derived from sources within Indiana. In the case of a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code, only so much of the income as is apportioned to Indiana under subsection (r) is considered derived from sources within Indiana.

(b) Except as provided in subsection (l), if business income of a corporation or a nonresident person is derived from sources within the state of Indiana and from sources without the state of Indiana, the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by the following:

...

- (5) For all taxable years beginning after December 31, 2010, the sales factor.

...

(e) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year. Sales include receipts from intangible property and receipts from the sale or exchange of intangible property. However, with respect to a foreign corporation, the denominator does not include sales made in a place that is outside the United States. Receipts from intangible personal property are derived from sources within Indiana if the receipts from the intangible personal property are attributable to Indiana under section 2.2 of this chapter. Regardless of the f.o.b. point or other conditions of the sale, sales of tangible personal property are in this state if:

- (1) the property is delivered or shipped to a purchaser that is within Indiana, other than the United States government; or
- (2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in this state and the purchaser is the United States government. Gross receipts derived from commercial printing as described in [IC 6-2.5-1-10](#) and from the sale of computer software shall be treated as sales of tangible personal property for purposes of this chapter.

(f) Sales, other than receipts from intangible property covered by subsection (e) and sales of tangible personal property, are in this state if:

- (1) the income-producing activity is performed in this state; or
- (2) the income-producing activity is performed both within and without this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(Emphasis added).

Since Taxpayer has operations both in Indiana and in other states, the Department calculated the sales factor by using income from Indiana sales as the numerator and income from everywhere as the denominator, as provided by IC § 6-3-2-2(e).

In its protest, Taxpayer states that its sales included services as well as the transfer of TPP. Taxpayer argues that, since it is a seller of TPP and that the TPP often is shipped to a customer in another state, that the

destination of the TPP is controlling when determining where the income was generated. The Department refers to IC § 6-3-2-2(f)(1), which provides that sales are in Indiana if the income-producing activity is performed in this state. In this case, Taxpayer is paid by its customers to anodize the customers' TPP. Those activities took place at Taxpayer's location in Indiana.

Taxpayer has not provided any documentation to establish that the anodizing materials which it applies to the customers' TPP is more than de minimis. Thus, Taxpayer's income-producing activities were the anodizing services which took place wholly within Indiana and not the sale of TPP. Since the anodizing services took place in Indiana, IC § 6-3-2-2(f)(1) provides that the income from those sales was generated in Indiana. Taxpayer also makes a general reference to *Chrome Deposit Corp. v. Indiana Dept. of State Revenue*, 557 N.E.2d 1110 (Ind. Tax 1990), but since that case concerns the gross income tax it is not relevant to the adjusted gross income tax at issue in this instance and will not receive further discussion. Therefore, Taxpayer has not met the burden imposed by IC § 6-8.1-5-1(c) of proving the proposed assessments wrong.

FINDING

Taxpayer's protest is denied.

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