

Letter of Findings Number: 02-20181713
Corporate Income Tax
Tax Years 2013, 2014, and 2015

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Company provided sufficient documentation to show that the underreported income assessment was incorrect, subject to audit verification.

ISSUE

I. Corporate Income Tax - Underreported Income.

Authority: IC § 6-8.1-5-1; IC § 6-3-2-1; *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); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); I.R.C. § 856; I.R.C. § 857.

Taxpayer protests the assessment of income tax.

STATEMENT OF FACTS

Taxpayer is a mobile home site operating company in Indiana that filed a consolidated corporate return with its subsidiaries. The Indiana Department of Revenue ("Department") conducted an income tax audit on taxpayer. As stated in the audit report, the Department determined that there were "material deviations between bank deposits from the business operations and the gross receipts reported by the taxpayer." This material deviation resulted in additional income tax assessment.

Taxpayer protested the audit assessment. Taxpayer's protest argues two issues: 1) the Department improperly determined that extensions of credit from the bank were underreported income and 2) the Department improperly determined that equity investments made by Taxpayer under its other name and subsidiary were income. A hearing was held and this Letter of Findings results. Additional facts will be provided as necessary.

I. Corporate Income Tax - Underreported Income.

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. Also, when courts examine "a statute that an agency is 'charged with enforcing . . . [the courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014) (internal citation omitted).

During the audit, the Department conducted a bank reconciliation of Taxpayer's and its subsidiaries' accounts. The audit report stated that: "the reconciliations of deposits to gross receipts' are attached. The taxpayer was given several opportunities to resolve these discrepancies. The taxpayer did not provide any response to these reconciliations." Indiana imposes a tax on every corporation's adjusted gross income derived from sources within Indiana. IC § 6-3-2-1(b). Thus, pursuant to IC § 6-3-2-1 the Department determined that Taxpayer had underreported income.

During the protest, Taxpayer stated that the Department improperly included extensions of credit and equity investments as underreported income. Taxpayer, since the audit, has provided bank accounts to show the extensions of credit and deposits into Taxpayer's bank account. Taxpayer also provided bank records and highlighted the equity investments under both Taxpayer's subsidiaries and its other name. Taxpayer also provided information from the Indiana Secretary of State's office showing Taxpayer is the other company listed on the bank accounts and transactions, just under a different name.

After examining Taxpayer's documents during the protest process, the Department agrees with Taxpayer's protest. Taxpayer's new documentation will be reviewed and the audit division is instructed to remove any draws from a line of credit and equity investments to subsidiary from the assessment. Taxpayer has met its burden under IC § 6-8.1-5-1(c) and is sustained subject to audit verification.

FINDING

Taxpayer's protest is sustained subject to audit verification.

March 28, 2019

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