

Letter of Findings: 02-20182425
Corporate Income Tax
For the Year 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department did not agree that Indiana Home Improvement Company established that the Department's assessment of additional corporate income tax was wrong; although Home Improvement Company provided an alternative net operating loss calculation, it was unable to clearly establish that the Department's original NOL calculation was "wrong" and its own alternative was "right."

ISSUE

I. Indiana Corporate Income Tax - Net Operating Loss Calculation.

Authority: IC § 6-3-2-2.6(b); IC § 6-8.1-5-1(a); IC § 6-8.1-5-1(c); IC § 6-8.1-5-4(a); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues the Department's audit miscalculated the amount of net operating losses Taxpayer was entitled to carry forward to the year 2015 and, as a result, the Department's assessment of additional corporate income tax was unwarranted.

STATEMENT OF FACTS

Taxpayer is an Indiana, family-owned business which provides its customers building improvements including vinyl siding, replacement windows, steel and shingle roofing, gutter systems, and insulation. Taxpayer was organized in 1983 as a "regular corporation" for income tax purposes.

The Indiana Department of Revenue ("Department") conducted a corporate income tax audit which concluded that Taxpayer did not correctly calculate its Net Operating Losses ("NOLs").

The Department's audit found that Taxpayer had NOLs for the years 1998 through 2009 but that it "did not apply the losses properly to calendar years 2014 and 2015." The audit report states that in 2014, Taxpayer "had additional net operating losses which were available but not applied." According to the audit report, in 2015 Taxpayer "applied more losses than were available." The audit report states that Taxpayer was unable to provide income tax returns prior to 1997.

The audit report states that Taxpayer did not provide a NOL schedule "to determine how the losses were applied . . ." Instead, the audit prepared its own NOL schedule to adjust Taxpayer's 2014 and 2015 tax returns. The audit *did* allow the 2014 losses which were available but which Taxpayer originally failed to claim. However, because Taxpayer had claimed more NOLs than were available in 2015, the audit reduced the amount of NOLs carried forward to 2015. As a result, the Department assessed additional 2015 income tax for approximately \$11,000.

Taxpayer disagreed with the proposed assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest arguing that the Department's audit failed to properly consider the documentation Taxpayer supplied during the audit review.

I. Indiana Corporate Income Tax - Net Operating Loss Calculation.

DISCUSSION

The issue is whether Taxpayer has met its burden of establishing that the Department's calculation of its available NOLs was incorrect and that, as a result, the proposed assessment of additional corporate income tax is wrong.

At the outset, it is the Taxpayer's responsibility to establish that the assessment of additional corporate income tax 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).

In order to establish that an assessment is wrong, a taxpayer is required to provide documentation explaining and supporting his or her challenge. 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); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). 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, interpretations of Indiana tax law contained within this decision, as well as the original audit, are entitled to deference.

In effect, in order to establish that the assessment is wrong, Taxpayer must establish that the audit's calculation of its available NOLs was incorrect because the audit understated the amount of losses available to carry forward to its 2015 return.

Indiana law, IC § 6-3-2-2.6(b), allows taxpayers to "carry forward" accumulated losses:

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.

Indiana law also requires that each taxpayer maintain and provide adequate documentation necessary to correctly calculate any potential tax liability.

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for tax by reviewing those books and records. IC § 6-8.1-5-4(a).

The Department's proposed assessment was predicated on the Department fulfilling its responsibility to issue a proposed assessment when it believes that a taxpayer may not have reported the correct amount of tax due. IC § 6-8.1-5-1(a) states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department *shall make a proposed assessment* of the amount of the unpaid tax on the basis of the best information available to the department. (*Emphasis added*).

Since Taxpayer agrees that *some* amount of additional tax was due, IC § 6-8.1-5-1(a) imposes on the Department the responsibility to issue a proposed assessment. In this case, there is no question that that additional tax is now due. However, Taxpayer argues that the assessment - as it stands - is incorrect and that a lesser, but undermined, amount of tax is due from Taxpayer.

Taxpayer's losses accumulated years prior to 1985, yet copies of those returns were unavailable. Taxpayer however relies on a 1996 federal schedule to purportedly establish that the losses were greater than determined by the Department's audit. Taxpayer also points out what it believes are shortcomings and inconsistencies in the Department's process and that a "common sense" and less literal approach to the record would yield a result more favorable to Taxpayer. To that end, Taxpayer reviewed and provided federal loss schedules, state schedules, and copies of various tax returns.

The Department acknowledges Taxpayer's effort of assembling and presenting fragmentary information in order to arrive at an alternative assessment, yet even Taxpayer admits that its own "software did not do a good job keeping track of the Net Operating Loss carryforward" and that was unable to provide all the tax returns

requested. In response, Taxpayer questions why the NOL carry-forward calculations "were never questioned before."

Nonetheless, the Department is bound by what the law plainly requires in this and every other protest. In order to grant the relief requested and reduce the assessment, it is Taxpayer's responsibility to establish that the assessment is "wrong." IC § 6-8.1-5-1(c). Although Taxpayer makes a case that there are plainly gaps in the record for which Taxpayer makes not entirely unreasonable objections, the Department is unable to agree that Taxpayer has clearly established that the proposed assessment is "wrong" and the Taxpayer's alternative is "right."

FINDING

Taxpayer's protest is respectfully denied.

March 29, 2019

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