

DEPARTMENT OF STATE REVENUE

02-20190011.LOF; 02-20190019.LOF

02-20190021.LOF; 02-20190020.LOF

Letter of Findings: 02-20190011; 02-20190019; 02-20190021; 02-20190020
Corporate Income Tax
For the Year 2017

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Related Companies were able to provide requested returns from flow through entities. Audit will review and confirm these returns.

ISSUES**I. Corporate Income Tax - Imposition.**

Authority: IC § 6-3-2-1; IC § 6-8.1-5-1; IC § 6-3-4-12; *Dep't 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); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Sherwin-Williams Co. v. Indiana Dep't of State Revenue*, 673 N.E.2d 849 (Ind. Tax Ct. 1996).

Taxpayers protest the imposition of additional corporate income tax.

II. Tax Administration - Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; IC § 6-8.1-5-1; [45 IAC 15-11-2](#).

Taxpayers protest the assessment of negligence penalty.

STATEMENT OF FACTS

Taxpayers are related partnerships with related entities operating both in and outside of Indiana. The Indiana Department of Revenue ("Department") reviewed the returns and determined that there were insufficient filings for the related flow through entities, which will be described in the Discussion. Taxpayer disagreed with that decision and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayers' representative explained the basis for the protest. This Letter of Findings results.

I. Corporate Income Tax - Imposition.**DISCUSSION**

The Department sent Proposed Assessments for 2017 to Taxpayers determining that Taxpayers did not pay the tax due when they filed. Taxpayers protested that the flow through entities, themselves paid the corporate withholding tax due. In the course of the protest process a review of the Department's records showed the assessments were the result of Taxpayers failing to provide pass through entities returns. The pass through entities are described as, docket 02-20190020 consists of two related entities; docket 02-20190019 consists of two related entities; docket 02-20190011 consist of two related entities; and docket 02-20190021 consists of three related entities. All four dockets are also related entities of each other.

As a threshold issue, it is the Taxpayers' responsibility to establish that the 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 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). 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, reasonable interpretations of Indiana tax law contained within this decision, as well as the preceding audit, are entitled to deference.

"Indiana imposes a tax on every corporation's adjusted gross income derived from sources within Indiana." IC § 6-3-2-1(b). In cases where a corporation derives business income from sources both within and without Indiana, the "adjusted gross income derived from sources within the state of Indiana" is determined by an apportionment formula. *Sherwin-Williams Co. v. Indiana Dep't of State Revenue*, 673 N.E.2d 849, 851 (Ind. Tax Ct. 1996).

To support its protest Taxpayers cite to IC § 6-3-4-12(e):

Amounts deducted from payments or credits to a nonresident partner during any taxable year of the partnership in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such nonresident partner for the nonresident partner's taxable year within or with which the partnership's taxable year ends. A return made by the partnership under subsection (b) shall be accepted by the department as evidence in favor of the nonresident partner of the amount so deducted for the nonresident partner's distributive share.

Taxpayers state they followed the requirements of IC § 6-3-4-12(e). In this instance, Taxpayers were assessed additional corporate income tax due to lack of flow through entities' returns and K-1s. During the protest process, Taxpayers provided proof of filing along with proof the returns were timely filed. In addition, Taxpayers provided the necessary K-1s. The Department issued Proposed Assessments after one partnership filed before any related party filed or before the filing due date. This then cause a cascade of Proposed Assessments that occurred prior to Taxpayers' filing due date. Taxpayers provided the documentation the Department requested and therefore meet its burden under IC § 6-8.1-5-1(c). Taxpayers' protest is sustained.

FINDING

Taxpayers' protest is sustained.

II. Tax Administration - Negligence Penalty.

Taxpayers requested that the Department abate the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty when "the taxpayer affirmatively establishes that the failure . . . was due to reasonable cause and not due to negligence." [45 IAC 15-11-2](#)(c). The taxpayer "must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the

penalty imposed under this section." *Id.* The Department is mindful that "[r]easonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case." *Id.*

In this instance, Taxpayers has proved the Department's assessment incorrect as stated in Issue I. Thus, since the corporate income tax was determined not be owed, the penalty is also not owed by Taxpayers.

Finding

Taxpayers' protest of the negligence penalty is sustained.

SUMMARY

Taxpayers' protest regarding corporate income tax is sustained. Taxpayers' protest regarding penalty is sustained.

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