

**Letter of Findings: 02-20191198
Corporate Income Tax
For Tax Year 2011**

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 Indiana Department of Revenue's (the "Department") 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Application of remaining research expense credits eliminated Taxpayer's tax liability for tax year 2011.

ISSUE

I. Corporate Income Tax - Research Expense Credit.

Authority: IC § 6-3.1-4-2; IC § 6-3.1-4-3; IC § 6-3.1-4-4; IC § 6-8.1-5-1; *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); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); Letter of Findings 02-20140358 (Nov. 5, 2014); Supplemental Letter of Findings 02-20140358 (Feb. 26, 2015); Memorandum of Decision 02-20160336R.MOD (June 27, 2017); Letters of Findings 01-20160678.LOF, 01-20160679, 01-20160682, 01-20160683 (Dec. 27, 2017).

Taxpayer protests the denial of a claimed credit.

STATEMENT OF FACTS

Taxpayer is an out-of-state grain processor providing ingredients to the food, beverage, brewing, and pharmaceutical industries worldwide. Taxpayer has locations around the world, including Indiana. Taxpayer files a consolidated federal return and elects to file a separate Indiana income tax return based on its nexus with Indiana. Taxpayer filed an amended federal tax return for 2011 which reported adjustments to its federal taxable income. Taxpayer also filed an Amended Indiana Corporate Income Tax return for the same year.

The Indiana Department of Revenue ("Department") conducted an audit related to tax years 2009, 2010, and 2011. The Department made adjustments to Taxpayer's returns, which increased Taxpayer's Indiana income for the 2009 and 2011 tax years and reduced Taxpayer's net operating loss incurred in the 2010 tax year. The Department applied Taxpayer's available net operating loss deductions to the additional income in the 2009 and 2011 tax years, reduced Taxpayer's net operating loss incurred in the 2010 tax year, and adjusted Taxpayer's claimed research expense credits for 2010 and 2011 tax years. The adjustment to the research expense credits were due to lack of documentation. The Department's adjustments resulted in a proposed assessment of additional adjusted gross income tax and interest for tax year 2011.

Taxpayer protested the proposed assessment of additional adjusted gross income tax. After an administrative hearing, the Department issued a Letter of Findings 02-20140358 (November 5, 2014) 20150128 Ind. Reg. 045150015 NRA, denying Taxpayer's protest in part and sustaining in part. Taxpayer requested a rehearing, and the Department granted the request related to the disallowance of claimed research expense credits. The Department issued Supplemental Letter of Findings 02-20140358 (February 26, 2015) 20150429 Ind. Reg. 045150091 NRA, which sustained Taxpayer's protest related to additional research expense credits for activities performed in Indiana because Taxpayer provided supporting documentation. A supplemental audit review was conducted. The amounts for Taxpayer's research expense credits were adjusted for tax years 2010 (approximately \$185,000) and 2011 (approximately \$112,000).

As a result of the audit adjustments, as well as the decisions in the Department's Letter of Findings and Supplemental Letter of Findings, Taxpayer filed an amended return for tax year 2011. Taxpayer's 2011 amended return excluded income from foreign jurisdictions in which Taxpayer claimed it had nexus and should not have been included in the Indiana sales factor numerator. The amended return requested a refund and an increase in

The Department declined to accept Taxpayer's amended return because adjustments from the audit were not reflected in the return. Thus, Taxpayer's refund request was denied. The Department did not make a substantive determination on the sales apportionment issue. Taxpayer protested, and after an administrative hearing, the Department issued Memorandum of Decision 02-20160336R.MOD 20170830 Ind. Reg. 045170369 NRA. Taxpayer's protest was sustained in part and denied in part. The Department determined that Indiana's throwback rule should not apply to income from eight specific countries; the throwback request related to the remaining countries was denied.

While the above issues resolved questions related to Taxpayer's overall income, Taxpayer's filing of an amended Indiana return also triggered a Notice of Proposed Assessment. Taxpayer agreed to the revised assessment of approximately \$258,000 but protested the Department's application of research expense credits. Taxpayer's protest was timely received in 2018; however, the protest was not forwarded to the Department's Legal Appeals division until 2019. In the interim and without success, Taxpayer contacted the Department several times attempting to follow-up on the status of its protest. Eventually, Taxpayer's Power of Attorney contacted the Legal Appeals division directly, and the protest was appropriately docketed.

Between the time the current protest was filed to the time it was docketed, Taxpayer filed its required yearly tax returns. Because Taxpayer's account had an outstanding balance of \$258,000 for the proposed assessment, Taxpayer's refund request for tax year 2017 was incorrectly applied to offset the 2011 tax liability related to this protest. Once Taxpayer notified the Department of the error, the 2017 amount was credited back to Taxpayer's account and subsequently refunded as originally requested.

The above history of Taxpayer's account leads to the remaining issue under protest - the calculation and application of research expense credits stemming from tax year 2011. Taxpayer protested the Department's application of the research expense credits after issuance of the Memorandum of Decision 02-20160336R.MOD. An administrative hearing was held, and this Letter of Findings results. Additional facts will be provided as necessary.

I. Corporate Income Tax - Research Expense Credit.

DISCUSSION

The issue is what is the amount of research expense credit Taxpayer accrued in tax year 2011 and how is that amount applied to tax year 2011 and subsequent tax years.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. A proposed assessment is prima facie evidence the Department's claim for the unpaid tax is valid. IC § 6-8.1-5-1(c). The burden of proving the proposed assessment is wrong rests with the person against whom the proposed assessment is made. *Id.*; See e.g. *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). 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).

A taxpayer that incurs Indiana qualified research expenses in a tax year is entitled to a research expense tax credit ("REC") for the taxable year. IC § 6-3.1-4-2(a). Section 41 of the Internal Revenue Code and related regulations apply to the interpretation and administration by the Department for research expense credits. IC § 6-3.1-4-4. This includes allocation and pass through of credit to applicable taxpayers. *Id.* The amount of REC in this protest is not in question; however, the Department notes that tax year 2011 was subject to the "Discovery Test" under Treasury Decision 8930. If the amount of REC credits were in dispute, the Department would apply the less restrictive "Uncertainty Test" under Treasury Decision 9104. See Letters of Findings 01-20160678.LOF, 01-20160679, 01-20160682, 01-20160683 20180228 Ind. Reg. 045180072NRA (discussing how the "Discovery Test" and "Uncertainty Test" are applied and the effective date of each).

IC § 6-3.1-4-3 states:

- (a) The amount of the credit provided by this chapter that a taxpayer uses during a particular taxable year

may not exceed the sum of the taxes imposed by [IC 6-3](#) for the taxable year after the application of all credits that under [IC 6-3.1-1-2](#) are to be applied before the credit provided by this chapter. If the credit provided by this chapter exceeds that sum for the taxable year for which the credit is first claimed, then the excess may be carried over to succeeding taxable years and used as a credit against the tax otherwise due and payable by the taxpayer under [IC 6-3](#) during those taxable years. Each time that the credit is carried over to a succeeding taxable year, it is to be reduced by the amount which was used as a credit during the immediately preceding taxable year. The credit provided by this chapter may be carried forward and applied to succeeding taxable years for ten (10) taxable years following the unused credit year.

(b) A credit earned by a taxpayer in a particular taxable year shall be applied against the taxpayer's tax liability for that taxable year before any credit carryover is applied against that liability under subsection (a).

(c) A taxpayer is not entitled to any carryback or refund of any unused credit.

The original audit for RECs was related to tax years 2009, 2010, and 2011. Neither the original audit report nor the two supplemental audit reports discuss adjustments to research expense credits related to 2009. The dollar amount or application of REC related to tax year 2009 is not at issue in this protest. The only REC amounts in question are those related to 2010 and 2011. The Department notes that all amounts discussed in the following paragraphs are approximates.

When Taxpayer filed its initial tax return for tax year 2010, it claimed REC of \$185,000. For tax year 2011, Taxpayer claimed \$116,000 in REC. The Department's original audit reduced both REC amounts - \$166,000 for 2010 and \$98,000 for 2011 - due to lack of supporting documentation for the claimed credits. Since Taxpayer missed the originally scheduled hearing, no Letter of Findings was issued; therefore, no adjustments were made to the audited assessments. Taxpayer requested a rehearing and provided the Department with additional documentation. After the supplemental audit, the Department adjusted the REC amounts to \$185,000 for 2010 and \$112,000 for 2011. Based on the materials submitted in the current protest, Taxpayer does not disagree with the REC credit amounts of the supplemental audit, but rather protests how those two amounts were applied.

The above amounts of REC in 2010 and 2011 provided Taxpayer with \$297,000 in available REC to apply to those tax years. Taxpayer claimed \$22,000 in REC in 2010. This left Taxpayer with \$163,000 of REC from tax year 2010 to carry forward to tax year 2011. The carry forward amount plus the \$112,000 means Taxpayer had \$275,000 in REC available for tax year 2011. When Taxpayer filed an amended return for tax year 2011, the Department applied \$164,000 to Taxpayer's adjusted gross income in Indiana for tax year 2011. This left Taxpayer with \$111,000 in REC.

A current review of Taxpayer's account shows a remaining adjusted gross income of \$94,000 for tax year 2011. Now that the correct amount of REC has been calculated and applied to Taxpayer's account, the remaining available balance of REC of \$111,000 can be applied to the remaining amount of 2011 Indiana adjusted gross income. Application of the \$111,000 REC eliminates Taxpayer's tax liability related to tax year 2011. Thus, Taxpayer has met the burden imposed under IC § 6-8.1-5-1(c) showing the Department incorrectly applied its REC credits. Taxpayer's protest is sustained.

FINDING

Taxpayers' protest is sustained.

October 3, 2022

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