

**Letter of Findings: 02-20221132
Indiana Corporate Income Tax
For the Year 2020**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 agreed with Agricultural Science business that it was entitled to claim a foreign source dividend deduction on its 2020 corporate income tax return; Agricultural Science company included a completed Schedule IT-20FSD with its 2020 return and the Department erred in finding that the schedule was incomplete.

ISSUE

I. Indiana Corporate Income Tax - Foreign Source Dividend Deduction.

Authority: IC § 6-3-2-12; 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); I.R.C. § 61(a)(7); Income Tax Information Bulletin 78 (January 2003)

Taxpayer argues that the Department erred in disallowing the Foreign Source Dividend Deduction (FSDD) claimed on Taxpayer's 2020 income tax return.

STATEMENT OF FACTS

Taxpayer is an agricultural services company headquartered outside Indiana but conducting business in this state. Taxpayer routinely files Indiana corporate income tax returns and did so for the tax year 2020. The Indiana Department of Revenue ("Department") reviewed the return and, in a letter dated February 14, 2022, assessed approximately \$500,000 in additional tax, penalties, and interest. The Department explained:

A review of your Indiana C Corporation for the tax period ending December 31, 2020, indicates you owe an additional [approximately \$500,000]. This amount represents the full liability due including all assessed penalties and interest to date. Details of this amount and the reasons for the assessment are listed below with additional information on page two of this notice.

Taxpayer disagreed with the assessment and submitted a protest to that effect. In its protest submission, Taxpayer explained:

The notice indicated that the Department is disallowing the Foreign source dividend deduction from Schedule IT-20FSD related to Internal Revenue Code ("IRS") 951 Global Intangible Low-Taxed Income ("GILTI") and Subpart F Income.

An administrative hearing was scheduled in order to allow Taxpayer and its representatives an opportunity to further explain the basis for its protest and the reasons why Taxpayer was entitled to the FSDD. This Letter of Findings is based on the written protest and the explanations contained therein.

I. Indiana Corporate Income Tax - Foreign Source Dividend Deduction.

DISCUSSION

The issue is whether Taxpayer has met its burden of establishing that the information provided on its 2020 Schedule IT-20FSD was sufficient to establish that it was entitled to claim a FSDD.

As with any assessment of Indiana listed taxes, it is Taxpayer's responsibility to establish that the proposed assessments of tax, interest, and penalty are incorrect. As stated in IC § 6-8.1-5-1(c) and Indiana case law, "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid, including during an action appealed to the tax court under this chapter. 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).

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 are entitled to deference.

Taxpayer argues that it was entitled to claim the FSDD in its 2020 Indiana return. At the federal level, such dividends are included in the definition of a corporation's "gross income." I.R.C. § 61(a)(7) provides:

Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

- (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
- (2) Gross income derived from business;
- (3) Gains derived from dealings in property;
- (4) Interest;
- (5) Rents;
- (6) Royalties;
- (7) **Dividends**[.]

(Emphasis added).

Indiana mirrors the federal provision as provided at IC § 6-3-2-12 which defines, in part, foreign source dividends.

(b) A corporation that includes any foreign source dividend in its adjusted gross income for a taxable year is entitled to a deduction from that adjusted gross income. The amount of the deduction equals the product of:

- (1) the amount of the foreign source dividend included in the corporation's adjusted gross income for the taxable year; multiplied by
- (2) the percentage prescribed in subsection (c), (d), or (e), as the case may be.

(c) The percentage referred to in subsection (b)(2) is one hundred percent (100[percent]) if the corporation that includes the foreign source dividend in its adjusted gross income owns stock possessing at least eighty percent (80[percent]) of the total combined voting power of all classes of stock of the foreign corporation from which the dividend is derived.

Income Tax Information Bulletin 78 (January 2003) explains:

A deduction is provided for foreign source dividends in the computation of Indiana Adjusted Gross Income. "Foreign source dividend" is a dividend from a foreign corporation, which also includes any amount that a taxpayer is required to include in its gross income under Section 951 of the Internal Revenue Code[.]

. . . .

The amount of deduction is determined by the percentage of voting stock owned, by the taxpayer, in the foreign corporation computed as follows:

The deduction is 100[percent] of the foreign source dividends included in adjusted gross income if the taxpayer owns at least 80[percent] of the total combined voting power of all classes of stock of the foreign corporation from which the dividend is derived.

Taxpayer's IT-20FSD detailed dividends received from various foreign entities each of which is 100 percent owned by Taxpayer. However, the Department disallowed the deduction because it found that the information contained in "Column A" calling for the recipient's federal employer identification number ("FEIN") could not be verified.

In this case, the Department erred in denying the credit because Taxpayer here has met its burden of establishing

that the information included in the IT-20FSD was sufficient for the Department to confirm and calculate the amount of the deduction.

FINDING

Taxpayer's protest is sustained.

November 23, 2022

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