

Memorandum of Decision 02-20231357
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 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Manufacturer was correct when it argued that its amended 2017 corporate income tax return was timely filed; the Department agreed that Indiana conforms to the federal carryback provisions, and Manufacturer was entitled to carry back losses three years from the tax year of the loss rather than the year to which the loss was carried back.

ISSUE

I. Indiana Corporate Income Tax - Refund and Statute of Limitations.

Authority: *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *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); [IC 6-3-1-11](#); [IC 6-3-2-2.6](#); I.R.C. § 1212; I.R.C. § 6501.

Taxpayer argues that the Department erred denying it a refund of corporate income tax and that the refund was requested within the statute of limitations.

STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of manufacturing and selling its products. Taxpayer conducts business in Indiana and routinely filed Indiana corporate income tax returns.

Taxpayer submitted an amended 2017 tax return calling for a refund of income tax. The Indiana Department of Revenue ("Department") reviewed the return. That review resulted in a denial of the requested refund.

In a letter dated October 2022, the Department explained why the refund was denied as follows:

Indiana Code § 6-8.1-9-1 states that in order to receive a refund, a claim must be filed within three years after the due date of the return or date of payment, whichever is later. Your request and claim for a refund were filed outside of the time frame and must be denied for the following period October 31, 2017.

Taxpayer disagreed with the Department's decision and submitted a protest to that effect. Taxpayer asked that the Department decide the issue without an administrative hearing. This Memorandum of Decision is written based upon Taxpayer's protest letter and the information available to the Department.

I. Indiana Corporate Income Tax - Refund and Statute of Limitations.

DISCUSSION

The only issue addressed in this decision is whether the Department made a mistake when it found that the requested refund was untimely filed.

When a taxpayer challenges taxability in a specific instance, that taxpayer is required to provide documentation explaining and supporting its 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). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579,

Taxpayer argues that the Department misunderstood or misapplied the Indiana and federal rules regarding capital loss carrybacks. Taxpayer explains:

Based on its conformity to the Internal Revenue Code, Indiana allows capital loss carrybacks of three years in accordance with IRC Sec. 1212(a)(1)(A). Per IRC Sec. 6501(h), the statute of limitations for capital loss carrybacks is three years from the tax year of the loss rather than the year to which the loss was carried back.

....

The [Taxpayer's] capital loss carried back to 10/31/17 was a loss originating in 10/31/2020, meaning that the statute of limitations for the 10/31/17 amended return for the loss carryback would be based on the 10/31/2020 statute of limitations, which is still open until 2024.

The federal provisions on which Taxpayer relies states:

(1) In general

If a corporation has a net capital loss for any taxable year (hereinafter in this paragraph referred to as the "loss year"), the amount thereof shall be—

(A) a capital loss carryback to each of the 3 taxable years preceding the loss year, but only to the extent—

- (i) such loss is not attributable to a foreign expropriation capital loss, and
- (ii) the carryback of such loss does not increase or produce a net operating loss (as defined in section 172(c)) for the taxable year to which it is being carried back[.] I.R.C. § 1212(a)(1)(A).

In addition, Taxpayer cites the federal rule as follows:

In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback or a capital loss carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss or net capital loss which results in such carryback may be assessed. I.R.C. § 6501(h).

The Department here notes that, unlike net operating loss deductions which are specifically addressed in [IC 6-3-2-2.6](#), Indiana law does not directly address capital loss carry backs. In this and similar instances, Indiana "piggybacks" the relevant federal provisions such as those pointed out above. [IC 6-3-1-11\(b\)](#) is the Indiana's piggyback provision which states:

Whenever the Internal Revenue Code is mentioned in this article, the particular provisions that are referred to, together with all the other provisions of the Internal Revenue Code in effect on January 1, 2020, that pertain to the provisions specifically mentioned, shall be regarded as incorporated in this article by reference and have the same force and effect as though fully set forth in this article. To the extent the provisions apply to this article, regulations adopted under Section 7805(a) of the Internal Revenue Code and in effect on January 1, 2020, shall be regarded as rules adopted by the department under this article, unless the department adopts specific rules that supersede the regulation.

On the sole issue of whether Taxpayer's amended return was timely filed, Taxpayer's analysis is correct. Indiana follows the federal statute, and the statute allows the loss carryback as explained by Taxpayer.

FINDING

Taxpayer's return was timely filed, and its protest on that single issue is sustained.

June 15, 2023

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