

Supplemental Letter of Findings 02-20221716
Corporate Income Tax
For the Years 2020 and 2021

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

HOLDING

While out-of-state Marketing Company made a mistake in preparing and filing its Indiana corporate income tax return, the Department failed to timely respond to Marketing Company's concerns and that the collection fees assessed Marketing Company should be abated.

ISSUE

I. Indiana Corporate Income Tax - Collection Fees.

Authority: [IC 6-8.1-5-1](#); [IC 6-8.1-8-2](#); [IC 6-8.1-8-4](#); *Bonus Business Definition Global Intangible Low-Taxed Income-Investopedia*, <https://www.investopedia.com/global-intangible-low-taxed-income-gilti-definition-5097113>.

Taxpayer argues that the Department erred in assessing it additional corporate income tax, failed to respond to Taxpayer's questions concerning the assessment, prematurely allowed the assessment to advance to the "warrant" stage, and assessed unjustified collection fees.

STATEMENT OF FACTS

Taxpayer is a company headquartered outside Indiana in the business of providing its customers certain business services.

Taxpayer routinely files Indiana corporate income tax returns. The Indiana Department of Revenue ("Department") reviewed Taxpayer's returns and concluded that Taxpayer made an error in filing its 2020 tax return. As a result, the Department issued Taxpayer an assessment of approximately \$415,000.

Taxpayer responded to the Department's assessment by questioning the reasons for the assessment. The matter went unresolved and the assessment advanced to the warrant stage.

Eventually, the issue was resolved when Taxpayer prepared and submitted an amended return. Nonetheless, Taxpayer incurred penalties, interest charges, and collection fees. Since that occurrence, both the penalties and interest charges were resolved to Taxpayer's satisfaction. The collection fees, however, remained. Taxpayer disagreed, maintaining that the fees should be abated and submitted a protest to that effect.

Taxpayer did not ask for an administrative hearing on the matter. As a result, this Supplemental Letter of Findings relies on the documentation provided by Taxpayer and the Department's own records.

I. Indiana Corporate Income Tax - Collection Fees.

DISCUSSION

The issue is whether Taxpayer has established that it should not be responsible for paying collection fees.

In this case, it is helpful to understand that the substantive issue related to the application and reporting of Taxpayer's "Global Intangible Low-Taxed Income" ("GILTI") which is described as "a category of income that is earned abroad by U.S.-controlled foreign corporations (CFCs) and is subject to special treatment under the U.S. tax code." *Bonus Business Definition Global Intangible Low-Taxed Income*, <https://www.investopedia.com/global-intangible-low-taxed-income-gilti-definition-5097113>. (Last visited May 31,

For reasons only indirectly relevant here, the Department's assessment stemmed from Taxpayer's application of "GILTI" and the necessity of updating of Taxpayer's records to reflect timely tax payments made by Taxpayer's subsidiaries. In addition, the Department asked for information regarding Taxpayer's foreign source dividend deductions. That information was provided, and the substantive issues were resolved to both Taxpayer's and the Department's satisfaction. The assessment was reduced from approximately \$415,000 to approximately \$85,000. In addition, the Department agreed to abate the penalty charges.

[IC 6-8.1-5-1](#)(b) provides in relevant part:

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. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail. (*Emphasis added*).

In this case, the Department did exactly what it was required to do. The Department believed that Taxpayer had "not reported the proper amount of tax due" and issued the \$415,000 assessment based on "the best information available to the [D]epartment."

Taxpayer declined to pay the \$415,000 unless it understood the basis for that assessment and why the ten-percent penalty was assessed. The Department assessed the penalty on the ground that the \$415,000 remained "unpaid." Authority for doing so is found at [IC 6-8.1-8-2](#)(b).

If the person does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (20) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable. When the department issues a tax warrant, a collection fee of ten percent (10[percent]) of the unpaid tax is added to the total amount due.

Because the \$415,000 remained unpaid and because the Department allowed the liability to proceed to the "warrant stage," the liability was forwarded to the Department's collection agent which, under routine circumstances, the Department is authorized to do. The Department is entitled to employ the services of a collection agent which - in turn - is entitled to impose penalties sufficient to compensate the collection agent for its own efforts. The statutory authority is found at [IC 6-8.1-8-4](#).

(a) When the department collects a judgment arising from a tax warrant, it may proceed in the same manner that any debt due the state is collected, except as provided in this chapter. The department may employ special counsel or contract with a collection agency for the collection of a delinquent tax plus interest, penalties, collection fees, sheriff's costs, clerk's costs, and *reasonable fees* established under subsection (b) if:

- (1) an unsatisfied warrant has been issued by the department; or
- (2) the department received a tax payment by check or other instrument drawn upon a financial institution, and the check or other instrument was not honored by that institution.

(b) The commissioner and the budget agency shall set the fee that the special counsel or collection agency will receive and payment of the fee shall be made after a claim for that fee has been approved by the department.

(c) The fees become due and owing by the taxpayer upon the filing of an amended warrant with the circuit court clerk adding the fee authorized by subsection (b) to the amount of the judgment lien under section 2 of this chapter. (*Emphasis added*).

The "GILTI" issue is not routine, and resolution of the issue here required effort and time on both Taxpayer and the Department's part. Nonetheless, Taxpayer timely made efforts to resolve the issue. However, the Department failed to assure that the disputed liability did not advance to the warrant stage and - even more importantly - that its collection agent did not expend time and accrue expenses in its effort to collect the disputed assessment.

The issue here is not whether or not Taxpayer made a mistake when it filed the return. Instead, the issue is whether the interested parties did what was required of them. The Department did what the law requires when it issued the assessment; Taxpayer did what is reasonably expected to do when it did not immediately pay the \$415,000; the collection agency did it what it is contractually and legally required to do. However, the Department

did not do what it is sensibly required to do and allowed the \$415,000 to prematurely advance to the warrant stage.

The only remaining issue is - as between all parties involved - who should be responsible for paying the collection fees incurred by the Department's agent. In this case, that responsibility falls on the Department and the collection fees will be refunded.

FINDING

Taxpayer's protest is sustained.

September 26, 2023

Findings Replaces: New

Posted: 12/06/2023 by Legislative Services Agency

An [html](#) version of this document.