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DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 95-0687 ITC
Adjusted Gross Income Tax
For Tax Period: 1987 Through 1993

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Individual Income Tax - Adjusted Gross Income

Authority: IC 6-3-2-2.6; Internal Revenue Code Section 172; Treasury Regulation Section 1.172-4

Taxpayers protest the imposition of individual income tax on those years in which there was not an adjusted gross income loss.

STATEMENT OF FACTS

Taxpayers were legal residents of Indiana until September, 1987. At that time, they moved and became residents of Florida. Taxpayers owned an Indiana subchapter S corporation doing business solely in Indiana. Taxpayers also owned a home in Fort Wayne, Indiana throughout the assessment period. Upon investigation, the auditor assessed individual income tax based on the real property and business income for the years 1987 through 1993. Taxpayers protest this assessment. Additional facts will be provided below, as necessary.

I. Individual Income Tax - Adjusted Gross Income

DISCUSSION

Taxpayers claim that their losses prior to and throughout the assessment period negate any gains and, therefore, no income tax is due. Pursuant to IC 6-3-2-2.6, Indiana allows a corporation or nonresident

person to reduce their adjusted gross income tax with a deduction as allowed under the Internal Revenue Code (IRC) Section 172. Section 172 of the IRC states in part:
(a) Deduction Allowed -- There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. For purposes of this subtitle, the term "net operating loss deduction" means the deduction allowed by this subsection.

(b) Net Operating Loss Carrybacks and Carryovers--
(1) Years to Which Loss May Be Carried --
(A) General Rule - Except as otherwise provided in this paragraph, a net operating loss for any taxable year --
(i) shall be net operating loss carryback to each of the 3 taxable years preceding the taxable year of such loss, and
(ii) shall be net operating loss carryover to each of the 15 taxable years following the taxable year of the loss. . . Emphasis added.

Treasury Regulation Section 1.172-4(a)(3) states the loss carrybacks and carryovers "are considered to be applied in reduction of the taxable (or net) income in the order of the taxable years from which such losses are carried over or carried back, beginning with the loss for the earliest taxable year."

Taxpayers claim they had losses in years prior to the assessment period which, if applied to the income during the assessment period, would negate any adjusted gross income tax due. Taxpayers were asked to submit tax returns for the years prior to the assessment period but claimed copies were no longer available. The Department requested information from the Internal Revenue Service regarding the taxpayers' availability of loss carrybacks or carry forwards from years preceding the assessment period. Per the IRS, taxpayers did not carryback or carry forward any losses for tax years 1981 through 1985. It can not be determined whether taxpayers waived the carryback provision as all copies of their tax returns have been destroyed. Assuming taxpayers did have losses in years prior to the assessment period, and taxpayers failed to waive the carryback, per IRC Section 172(b)(3), they would be required to take the net operating losses back 3 years before carrying the losses forward 15 years.

Taxpayers offer an alternative method for computing tax due with the losses from years preceding and including the assessment period being applied to years within the assessment period. However, pursuant to IC 6-3-2-2.6, the Department will follow the procedure as outlined in the IRC and declines to accept the taxpayers alternative method.

FINDING

Taxpayers' protest is denied. Taxpayers have failed to provide the Department with evidence of losses prior to the assessment period and proof of their waiver of the loss carryback. Alternatively, taxpayers

have failed to provide the Department with amended tax returns for the years at issue.