

Letter of Findings: 02-20200375
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 did not agree with Indiana Recreation Center that it was entitled to carry-forward additional Net Operating Losses to its 2020 corporate return; the Department was unable to verify Recreation Center's NOL calculation or agree that there were sufficient NOLS to offset the proposed 2020 tax assessment.

ISSUE

I. Indiana Corporate Income Tax - Net Operating Loss Calculation.

Authority: IC § 6-3-1-3.5; IC § 6-8.1-5-1(c); Income Tax Information Bulletin 116 ((December 26, 2016 (retroactive)); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007)).

Taxpayer argues that the Department's assessment of additional corporate income tax was unwarranted because Taxpayer had Net Operating Losses available to offset the assessment.

STATEMENT OF FACTS

Taxpayer is an Indiana Recreation Center which files Indiana tax returns. Taxpayer filed a corporate income tax return (IT-20) for year 2020.

On the return, Taxpayer claimed approximately \$225,000 in Net Operating Losses (NOLs). The Department reviewed the return and disagreed with the amount of NOLs claimed. Instead, the Department allowed approximately \$40,000 in NOLs.

The Department's adjustment resulted in a proposed assessment of approximately \$12,000 in additional corporate income tax.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Indiana Corporate Income Tax - Net Operating Loss Calculation.

DISCUSSION

The issue is whether Taxpayer has provided documentation and explanation sufficient to establish that the assessment of additional tax was wrong because the Department miscalculated the amount of NOLs available to offset any potential additional 2020 tax liability.

IC § 6-3-1-3.5 permits Indiana taxpayers to claim NOLs based on the taxpayer's federal net operating loss for a taxable year as calculated under Section 172 of the Internal Revenue Code, adjusted for certain modifications required by IC § 6-3-1-3.5.

Indiana's NOL modifications are explained in Income Tax Information Bulletin 116 ((December 26, 2016 (retroactive)); January 1, 2018 (retroactive)) 20180829 Ind. Reg. 045180354NRA.

Notwithstanding the federal changes to net operating losses (generally, 80[percent] of taxable income and an unlimited carryforward period), Indiana will continue to allow net operating losses to be deducted up to 100[percent] of Indiana adjusted gross income. In addition, Indiana will continue to have a 20-year carryforward of net operating losses from a given year. Finally, Indiana will continue to not permit net operating loss carrybacks.

For all taxpayers, the net operating loss calculation will follow the federal net operating loss calculation, with the modifications in IC § 6-3-1-3.5 used to increase or decrease the Indiana net operating loss (prior to any apportionment or allocation). However, any deductions under [IC 6-3-2](#) are not permitted in determining net operating losses.

Taxpayer maintains that the pending assessment was "wrong" and asked for "a review of the NOL computations." To that end, Taxpayer supplied copies of its 2006 through 2019 tax returns.

As with any assessment, it is Taxpayer's responsibility to establish that this particular tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

In making its case, each 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). Thus, informed and reasonable interpretations of Indiana tax law contained within this decision are entitled to deference.

Taxpayer was asked to provide a detailed schedule of its available NOLs including an explanation *which* NOLs were available to be carried forward each year and an explanation of *how* the NOLs were carried forward (or backward) from year to year to year. Taxpayer declined the Department's request.

Neither the Hearing Officer nor representatives from the Department's Corporate Tax section were able to confirm or replicate Taxpayer's NOL calculation. The Department is unable to agree that Taxpayer has met its statutory burden under IC § 6-8.1-5-1(c) of establishing that the proposed assessment was wrong.

FINDING

Taxpayer's protest is respectfully denied.

August 19, 2021

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