

Letter of Findings 18-20211008
Financial Institution Tax
For the Year 2019

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 recognized Financial Institution's claim to net operating losses attributable to an acquired banking institution; any substantive adjustment to the original assessment was subject to the Department's supplemental review of the losses claimed on Financial Institution's 2019 return.

ISSUE

I. Financial Institution Tax - Net Operating Loss Calculation.

Authority: IC § 6-8.1-5-1; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Net Operating Losses and Other Tax Attributes, pro.bloombergtax.com/portfolio/net-operating-losses-and-other-tax-attributes.

Taxpayer argues that the Department made a mistake disallowing a net operating loss deduction.

STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of providing banking and financial services to individual customers, small businesses, and commercial clients. Taxpayer receives income from loans, credit card interest, and various service fees.

Taxpayer files combined Financial Institution Tax ("FIT") returns which includes other related entities.

The Indiana Department of Revenue ("Department") conducted a "limited scope" audit review of Taxpayer's returns. This most recent "limited scope" audit review was conducted to correct a previous 2016 through 2018 FIT audit which "misinterpreted" Indiana Code and erroneously removed certain entities from Taxpayer's combined returns. As explained in the current audit report, the entities removed "are subsidiaries of an insurance holding company which is a subsidiary of a bank holding company and were conducting the business of a financial institution in Indiana."

As further explained:

[A] subsidiary of a bank holding company includes the indirect subsidiaries of a bank holding company and the bank holding company engaged in the activities [] is authorized to perform under federal or state law in Indiana is conducting the business of a financial institution in Indiana.

The audit here at issue added entities to Taxpayer's returns which met "the definition of an FIT taxpayer conducting business in Indiana."

The audit resulted in assessment of approximately \$900 in additional FIT. Taxpayer disagreed with the additional assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for its protest. This Letter of Findings results.

I. Financial Institution Tax - Net Operating Loss Calculation.

DISCUSSION

The issue is whether Taxpayer has presented evidence sufficient to establish that the Department erred in failing to recognize its originally claimed net operating losses reported on its 2019 return.

Taxpayer explains that it acquired an unrelated bank in late 2019. According to Taxpayer, it also acquired the unrelated bank's approximately \$580,000 in losses. Taxpayer acknowledges that the losses claimed were limited by I.R.C. § 381 "as the state of Indiana follows I.R.C. § 381."

For reference's sake, and *not* for authoritative purposes, the I.R.C. § 381 limitation is described briefly as follows:

I.R.C. § 381 permits corporate taxpayers to preserve Net Operating Losses and other tax attribute carryovers following an ownership change.

Net Operating Losses and Other Tax Attributes,

<https://pro.bloombergtax.com/portfolio/net-operating-losses-and-other-tax-attributes>, (Last visited February 3, 2022).

In this case, Taxpayer is not challenging the Department's decision adding back the related entities but - according to Taxpayer - only the Department's "disallowance of the net operating loss."

The "limited scope" audit report says nothing concerning NOLs, says nothing about the carryover of losses attributable to Taxpayer's acquired bank, and says nothing about disallowing or accepting losses. Taxpayer states that the "limited scope" audit report "shows the 'reported value' return amounts without the NOL deduction on Line 25" and that the Department's auditor "was not able to provide . . . an explanation as to why this was disallowed."

As with any assessment, it is the Taxpayer's responsibility to establish that the 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 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).

In making its case and in meeting its statutory burden, Taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. IC § 6-8.1-5-1(c). 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, fn. 9 (Ind. Tax Ct. 2012).

Taxpayer has provided a multi-page "schedule" of its originally claimed losses. The Department made no comments in the "limited scope" audit report which refutes the amount of losses claimed or the substantive basis for those losses. In such a situation a taxpayer's "burden" is low, and the Department must rely entirely on the unchallenged information provided by the taxpayer. However, there is no basis on which to unilaterally abate the assessment or recalculate Taxpayer's income taking into consideration the \$580,000 in claimed losses. Nonetheless, Taxpayer has presented a viable argument which warrants the Department's audit division performing a supplemental audit and review of the NOLs.

FINDING

To the limited extent outlined in this Letter of Findings and subject to the audit's review and reconsideration of the conclusions reached in the "limited scope" audit, Taxpayer's protest is sustained.

March 2, 2022

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