DEPARTMENT OF STATE REVENUE

04-20060391.LOF

Letter of Findings: 06-0391
Sales and Use Tax
For the Years 2002, 2003, 2004

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ISSUE

I. Sales and Use Tax – Claim for Refund Requirement.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-9-1; IC § 6-8.1-9-2; 45 IAC 15-9-2(d); *Dreaded, Inc. v. Indiana Dep't of Revenue*, No. 49T10-0209-TA-105 (Ind. Tax Ct., Sept. 18, 2006); *Marhoefer Packing Co., Inc. v. Indiana Dep't of State Revenue,* 301 N.E.2d 209 (Ind. Ct. App. 1974); *Roehl Transportation, Inc. v. Indiana Dep't of State Revenue*, 653 N.E.2d 539 (Ind. Tax Ct. 1995)

Taxpayer protests the denial of adjustments it self-credited against its monthly sales and use tax liability.

STATEMENT OF FACTS

Taxpayer is a multinational corporation headquartered in Illinois. Taxpayer has a manufacturing plant in Indiana. Taxpayer files a Form IT-20 for Indiana income tax purposes.

The Department conducted a sales and use tax audit of Taxpayer for the years 2002, 2003, and 2004. A review of Taxpayer's records revealed that there were invoices on which Taxpayer had accrued use tax, but for which the use tax had not been remitted. The use tax accrued was never paid because Taxpayer took its own adjustments against the use tax liability for what it believed to be past errors of paying use tax on items that it subsequently determined were exempt. Taxpayer's internal procedures consist of compiling its sales and use tax activity in monthly "Sales and Use Tax Detail" reports which tally use tax accrued along with any overpayments that Taxpayer deems it made for that period. Taxpayer, therefore, reduced its current use tax liabilities with self-determined adjustments for overpayments from prior periods rather than file claims for refund for those periods as required by IC § 6-8.1-9-1. The Department allowed some of these adjustments and denied others primarily on the basis that the method of rolling forward self-assessed credits does not comply with the requirement to file claims for refund for any overpayments Taxpayer wishes to claim in a given tax year. *Id*.

Taxpayer noted, and the Department agrees, that Taxpayer participated in the Indiana Amnesty Program (Amnesty) (made available to Indiana taxpayers from September 15, 2005 to November 15, 2005). Taxpayer made a seven-hundred-and-fifty-thousand dollar ($750,000) payment under Amnesty which was to be applied toward any outstanding liability as determined by the Department's audit.

A hearing was held, along with several subsequent meetings to review documentation that Taxpayer diligently provided in support of its protest. This Letter of Findings results. Additional facts will be provided as necessary.

I. Sales and Use Tax – Claim for Refund Requirement.

DISCUSSION

Taxpayer protests the denial of the adjustments for overpayments of tax it self-assessed and self-credited against its monthly sales and use tax liability. The Department determined that Taxpayer should have filed claims for refund to properly claim its overpayments.

As noted in IC § 6-8.1-5-1(b), "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."

The statutes that deal with tax overpayments and claims for refund are IC § 6-8.1-9-1 and IC § 6-8.1-9-2.

IC § 6-8.1-9-1 states:

(a) If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. Except as provided in subsections (f) and (g), in order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

(1) The due date of the return.

(2) The date of payment.

For purposes of this section, the due date for a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax is the end of the calendar year which contains the taxable period for which the return is filed. The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund.

(b) When the department receives a claim for refund, the department shall consider the claim for refund and shall, if the taxpayer requests, hold a hearing on the claim for refund to obtain and consider additional

evidence. After considering the claim and all evidence relevant to the claim, the department shall issue a decision on the claim, stating the part, if any, of the refund allowed and containing a statement of the reasons for any part of the refund that is denied. The department shall mail a copy of the decision to the person who filed the claim. If the department allows the full amount of the refund claim, a warrant for the payment of the claim is sufficient notice of the decision.

(c) If the person disagrees with any part of the department's decision, the person may appeal the decision, regardless of whether or not the person protested the tax payment or whether or not the person has accepted a refund. The person must file the appeal with the tax court. The tax court does not have jurisdiction to hear a refund appeal suit, if:

(1) the appeal is filed more than three (3) years after the date the claim for refund was filed with the department;

(2) the appeal is filed more than ninety (90) days after the date the department mails the decision of denial to the person; or

(3) the appeal is filed both before the decision is issued and before the one hundred eighty-first day after the date the person files the claim for refund with the department.

(d) The tax court shall hear the appeal de novo and without a jury, and after the hearing may order or deny any part of the appealed refund. The court may assess the court costs in any manner that it feels is equitable. The court may enjoin the collection of any of the listed taxes under IC 33-26-6-2. The court may also allow a refund of taxes, interest, and penalties that have been paid to and collected by the department.

(e) With respect to the motor vehicle excise tax, this section applies only to penalties and interest paid on assessments of the motor vehicle excise tax. Any other overpayment of the motor vehicle excise tax is subject to IC 6-6-5.

(f) If a taxpayer's federal income tax liability for a taxable year is modified by the Internal Revenue Service, and the modification would result in a reduction of the tax legally due, the due date by which the taxpayer must file a claim for refund with the department is the later of:

(1) the date determined under subsection (a); or

(2) the date that is six (6) months after the date on which the taxpayer is notified of the modification by the Internal Revenue Service.

(g) If an agreement to extend the assessment time period is entered into under IC 6-8.1-5-2(f), the period during which a person may file a claim for a refund under subsection (a) is extended to the same date to which the assessment time period is extended.

IC § 6-8.1-9-2 states:

(a) If the department finds that a person has paid more tax for a taxable year than is legally due, the department shall apply the amount of the excess against any amount of that same tax that is assessed and is currently due. The department may then apply any remaining excess against any of the listed taxes that have been assessed against the person and that are currently due. If any excess remains after the department has applied the overpayment against the person's tax liabilities, the department shall either refund the amount to the person or, at the person's request, credit the amount to the person's future tax liabilities.

(b) If a court determines that a person has paid more tax for a taxable year than is legally due, the department shall refund the excess amount to the person.

(c) An excess tax payment that is not refunded or credited against a current or future tax liability within ninety (90) days after the date the refund claim is filed, the date the tax payment was due, or the date the tax was paid, whichever is latest, accrues interest from the date the refund claim is filed at the rate established under IC 6-8.1-10-1 until a date, determined by the department, that does not precede by more than thirty (30) days, the date on which the refund or credit is made.

(d) As used in subsection (c), "refund claim" includes an amended return that indicates an overpayment of tax.

Taxpayer raised several issues in its September 26, 2006, letter of protest and during the hearing. The following discusses the substantive issues Taxpayer raises.

First, Taxpayer argues that the internal methodology, referenced above, of crediting overpayments against its sales and use tax liability is a methodology it had been using for many years and under multiple prior audits without any prior notification by the Department that this practice was unacceptable. Taxpayer argues that this "revised position" negatively impacts Taxpayer's right to recover use tax that was erroneously remitted to the Department. Taxpayer asserts that the credits it took against its use tax liability every month were taken within the three-year statute of limitations and as such Taxpayer would have been entitled to a credit or refund of the overpaid taxes had it followed standard procedure.

Taxpayer documented this claim with an exhaustive review of their internal information which it presented to the Department in several meetings after the hearing. Taxpayer is correct that most of the self-credited overpayments would have fallen within the three-year statute of limitations had it properly claimed refunds. However the equities play out in this case, the Department cannot agree, as a matter of law, that Taxpayer's internal methodology withstands the clear statutory requirement that a claim for refund be filed with the

Department within the three-year statute of limitations if Taxpayer wishes to be refunded, or otherwise credited, for overpayment of taxes. To allow otherwise would frustrate the legislative intent to impose a time limitation to claim a refund, and the associated request to credit the overpayment to future tax years, by rendering the statute a nullity.

As a side note, Taxpayer refers to "the logic as set forth within the court's decision in Dreaded, Inc." to support its argument that Taxpayer's reliance on the Department's prior acceptance of Taxpayer's internal methodology should allow Taxpayer to escape this assessment. Presumably Taxpayer is referring to *Dreaded, Inc. v. Indiana Dep't of Revenue*, No. 49T10-0209-TA-105 (Ind. Tax Ct., Sept. 18, 2006) which is an unpublished case and therefore holds no precedential value.

Secondly, Taxpayer argues that the Indiana Code does not address the use of credits against tax liabilities when the *taxpayer* determines it has overpaid tax. Taxpayer argues that IC § 6-8.1-9-1(a) states that if a person has overpaid tax for a particular period, the person "*may* file a claim for refund." (Taxpayer's emphasis). Taxpayer argues that this code section does not mandate that a claim for refund must be filed in order to receive reimbursement. "Instead, the code. . . merely provides an administrative procedure that a taxpayer may follow to obtain a refund." Taxpayer also argues:

> Furthermore, although the Indiana Codes and Indiana Administrative Codes address the requirements that are essential for a claim for refund to be valid, the tax codes are silent with respect to other avenues and their restrictions with respect to recovering overpaid sales tax.
>
> If the language in IC 6-8.1-9-1(a) is strictly construed, i[t] can be inferred that other avenues of recourse are available to a taxpayer to correct erroneous payments of sales or use tax. As such, [Taxpayer] pursued another avenue of administrative relief that had always been a practice accepted by the Department during ever[y] previous audit.

Taxpayer misreads the statute. The first sentence of IC § 6-8.1-9-1(a) clearly addresses the circumstance when *the taxpayer* finds it has overpaid its taxes: "if a person has paid more tax than *the person determines* is legally due. . ., the person *may* file a claim for refund with the department." (*Emphasis added*). The plain meaning of this sentence is that a taxpayer may file a claim for refund if the taxpayer overpaid taxes, or by clear inference, taxpayer may choose, for whatever reason, not to file a claim for refund. Taxpayer's argues that this sentence allows for the inference that a taxpayer may choose some alternate means of "claiming the refund," since the statute does not have an absolute requirement that taxpayer "shall" claim a refund for overpayment. In other words, Taxpayer reads the statute to say: Taxpayer may choose to claim a refund of overpayment of taxes, or Taxpayer may choose some alternate means of making itself whole. Taxpayer chooses this method of refunding itself by applying its self-determined credits against its sales and use tax liability. But, the second sentence of IC § 6-8.1-9-1(a) states that "*in order to obtain the refund*, the person must file the claim with the department within three (3) years after the latter of the following. . .." (*Emphasis added*). The language cannot be any more clear; in order to be refunded (or consequently request that an overpayment be applied to future taxes) a taxpayer's claim must be filed within three years of either the due date of the return or the date of payment, whichever is later. Even assuming arguendo that the statute allows for some alternate means of "claiming a refund," the Department would have no way of knowing that these overpayments were properly claimed within the three-year statute of limitations. Taxpayer cannot assume that it can apply its own methodology and refund itself with credits which could be beyond the three-year time limitation because that would render the second sentence of IC § 6-8.1-9-1(a) a nullity. Taxpayer's method allows a time-limited claim for refund to transform into an indefinite rolling-over of overpayments from year to year, with the renewed opportunity then each year to claim a refund. This would frustrate the legislature's intent for these claims to be time limited.

Taxpayer's statement that the statute is silent on alternative avenues for recovering overpaid taxes is correct. Taxpayer, however, mistakenly interprets this statutory silence to mean that other unstated options may exist. The simpler and more clear reading of the plain language of the statute is that the claim for refund is the only means for recovering an overpayment of taxes – the silence means exactly that there are no other options for a taxpayer.

This reading of the statute is supported by case law. *Marhoefer Packing Co., Inc. v. Indiana Dep't of State Revenue,* 157 Ind. Ct. App. 505, 301 N.E.2d 209, 216, *trans. denied* (Ind. Ct. App. 1974) (the provision of filing a claim for refund within a certain time creates a condition precedent to the statutory right of refund). *Marhoefer*'s holding has been supported by subsequent cases.

Lastly, at the hearing, Taxpayer argued that, in the alternative if the Department insisted on the requirement to file a claim for refund, Taxpayer's ST-103s were its claim for refund. Taxpayer explained that the bottom line on the ST-103s reflected its overpayment of taxes which was then subtracted from the use tax liability owed. IC § 6-8.1-9-1(a)(2) requires that the claim for refund "set forth *the amount of the refund* to which the person is entitled *and the reasons that the person is entitled to the refund*."

IC § 6-8.1-9-1(a) also mandates that the claim must set forth the amount of the refund claimed and the reasons that the person is entitled to the refund. 45 IAC 15-9-2(d) provides that the claim for refund must set forth:

(1) the amount of refund claimed;

(2) a sufficiently detailed explanation of the claim so that the Department may determine its correctness;

(3) the tax period for which the overpayment is claimed; and

(4) the year and date the overpayment was made.

Taxpayer did not sufficiently delineate the claims to the Department as required by IC § 6-8.1-9-1(a) and 45 IAC 15-9-2(d)(2). Nor did Taxpayer state the year and date the overpayments were made, thus violating IC § 6-8.1-9-1(a) and 45 IAC 15-9-2(d)(4). It is possible, as well, to argue that Taxpayer did not state the amount of refund claimed, thus violating IC § 6-8.1-9-1(a) and 45 IAC 15-9-2(d)(1). Note that Form ST-103 instructions for all three years at issue clearly instruct in the "Total Amount Due" line that:

Any overpayment for the quarter should be claimed as a refund in brackets on Line P. A refund will be issued for the approved amount.

To summarize, therefore, Taxpayer would have three years, per IC § 6-8.1-9-1(a), to claim a refund for any overpayment of tax in a particular year. Once the timely claim for refund is made the Department would be required, per IC § 6-8.1-9-1(b), to issue a determination on the claim. Per IC § 6-8.1-9-2(d), the claim for refund of overpayment of taxes can be made on the tax return itself as long as the claim, per IC § 6-8.1-9-1(a)(2), "set[s] forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund."

Per IC § 6-8.1-9-2(a), which is read in *pari materia* with IC § 6-8.1-9-1(a) (See *Roehl Transportation, Inc. v. Indiana Dep't of State Revenue*, 653 N.E.2d 539, 542 (Ind. Tax Ct. 1995) explaining that when the court considers two or more statutes that relate to the same general subject matter, it will not read the statutes piecemeal, but rather will read them *in pari materia* and construe them harmoniously), when the Department finds that there is an overpayment, the Department is required to apply that overpayment against any amount of that same tax that is assessed *and is currently due*. Per IC § 6-8.1-9-2(a), the Department could also then apply any remaining excess against any other listed taxes currently due, but is not required to do so. Per IC § 6-8.1-9-2(a), if any excess remains after the Department has applied the overpayment against Taxpayer's tax liabilities, the Department is required to refund the amount to Taxpayer, or, *at Taxpayer's request*, credit the amount to the person's future tax liabilities; for example, such as the request on the tax return to apply overpayment to the following year's taxes.

The Department's attention to an overpayment of taxes is usually triggered by a taxpayer's claim for refund of that overpayment. The Department could, on its own, discover an overpayment, but there is no requirement – and Taxpayer has cited no statutes or case law that states a requirement – that the Department vet each taxpayer's data in search of overpayment of taxes. Such a requirement would place an unwieldy administrative burden on the Department. Therefore, generally, the Department cannot be on notice of Taxpayer's overpayments if Taxpayer has not stated the overpayments.

While, upon review, Taxpayer's claimed overpayments could very well have fallen within the statutory time limit had Taxpayer properly claimed refund or credit of these overpayments, Taxpayer did not do so. Taxpayer's self-credited overpayments do not satisfy the clear requirements of IC § 6-8.1-9-1.

FINDING

Taxpayer's protest is respectfully denied.

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