

Letter of Findings: 07-0204
Sales and Use Tax
For the Years 2002, 2003, and 2004

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ISSUE

I. Tax Administration – Interest on Claim for Refund.

Authority: IC § 6-8.1-9-1; IC § 6-8.1-9-2; [45 IAC 15-9-2](#).

Taxpayer protests that audit-generated refunds it received were erroneous because they did not include interest.

STATEMENT OF FACTS

Taxpayer is a Delaware corporation domiciled in Arkansas at the corporate headquarters of its parent. Taxpayer has a manufacturing plant in Indiana. The Indiana Department of State Revenue (Department) conducted a sales and use tax audit of Taxpayer for tax years 2002, 2003, and 2004. The audit commenced in July 2005 and was completed on January 9, 2007.

According to the Department's audit report, during the period under audit Taxpayer accrued and remitted a considerable amount of use tax. Also during this time period Taxpayer changed accounting systems. As a result of this change use tax was inadvertently remitted on items that were non-taxable items such as labor, seminars (with no materials provided), conferences, classified ads, certification fees, surveys, testing, lump sum contracts for improvements to realty, wrecker services, maintenance inspections, production utilities, and others areas. The Department credited Taxpayer for both sales taxes paid and use tax accrued in cases where the items were exempt.

The audit resulted in overpayment determinations for each of the tax years. The Department applied the overpayments against taxes due in each of those years, then issued a refund check for the remaining overpayments on March 1, 2007. The refund checks did not include any interest on the refunded amount.

P.L. 111-2006, Sec. 10, effective January 1, 2007, amended IC § 6-8.1-9-2(c) to accrue interest on a refund after 90 days from the date a refund claim is filed rather than after 90 days from "the date the tax payment was due or the date the tax was paid, whichever is later[. . .]." This legislation was signed into law on March 20, 2006.

Taxpayer protests that the Department did not pay interest on refunds that resulted from audit-generated overpayments due to an undue audit delay that coincided with an amendment to IC § 6-8.1-9-2(c) which, Taxpayer contends, changed the Department's obligation to pay interest. A hearing was held on Taxpayer's protest. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Use Tax – Interest on Claim for Refund.

DISCUSSION

Taxpayer protests that the Department did not pay interest on audit-generated refunds.

Taxpayer states its protest as follows:

[Taxpayer]'s objection to the lack of interest is that the auditor had more than enough time to complete the audit prior to the end of 2006 due to some "health issues" he had encountered. We ask that the State take this fact into consideration and award [Taxpayer] the interest on this refund audit that is justly due them.

At the hearing, Taxpayer argued that it should receive interest on its refund calculated from the date the taxes were paid.

Taxpayer argues two main issues: (1) that it made a claim for refund during the audit, and (2) had the audit been completed in 2006, Taxpayer would have had a right to interest on the audit-generated refunds, and that the auditor's illness had contributed to this delay.

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.

Prior to January 1, 2007, IC § 6-8.1-9-2(c) accrued interest on a refund after 90 days from "the date the tax payment was due or the date the tax was paid, whichever is later[. . .]" rather than from "the date the refund claim is filed." IC § 6-8.1-9-2(c) (as amended by P.L. 111-2006, Sec. 10, effective January 1, 2007). This legislation was signed into law on March 20, 2006, prior to Taxpayer's statement of overpayments to the auditor in the instant case.

[45 IAC 15-9-2\(b\)](#) states:

The department has no legal method of generating a claim for refund. A claim for refund can only be initiated pursuant to [IC 6-8.1-9-1](#).

EXAMPLE

A taxpayer is audited by the department for the tax period 19X3. This audit results in an overpayment of tax. The department has no legal authority to automatically [sic.] refund or credit this overpayment to the taxpayer.

Instead, the taxpayer must file a claim for refund as prescribed in [IC 6-8.1-9-1](#) and [45 IAC 15-9-1](#).

During the course of the audit, the auditor received a spreadsheet from Taxpayer stating what Taxpayer determined were overpayments of tax. The spreadsheet included over 30,000 line items. These were reviewed as part of the ongoing exchange between the auditor and the Taxpayer within the global scope of the audit. The Taxpayer's statement of overpayments was not a separate claim for refund outside the scope of the ongoing audit. These line items were under continuous review, including through regular communication with Taxpayer, throughout the remaining duration of the audit.

The result of the completed audit was that Taxpayer had made overpayments. The Department, therefore, *found* that there were *overpayments at the conclusion of the audit* on January 9, 2007.

Taxpayer *did not file a claim for refund* per IC § 6-8.1-9-1(a). Taxpayer acknowledged as much at the hearing. Furthermore, per [45 IAC 15-9-2\(b\)](#), the Department had no legal method for generating a claim for refund. Also, IC § 6-8.1-9-1 and IC § 6-8.1-9-2 are silent on audit-generated refunds. Technically, per the guidance set out in the example in [45 IAC 15-9-2\(b\)](#), Taxpayer could have filed a claim for refund on the audit-generated overpayments.

In this instance, the Department nonetheless did, on its own initiative, refund Taxpayer following the procedure set out in IC § 6-8.1-9-2(a). The Department applied the overpayments in each of the years at issue against the amounts of those same taxes that were assessed and currently due. Per IC § 6-8.1-9-2(a), the Department could also then have applied any remaining excess against any other listed taxes currently due, but it did not do so, nor was the Department required to. Per IC § 6-8.1-9-2(a), the Department then refunded Taxpayer the remainder of the overpayments.

IC § 6-8.1-9-2(c) deals with when the interest calculation is triggered on a refund. It first sets out a 90-day deadline from when the claim for refund is filed, the date the tax payment was due, or the date the tax was paid, whichever is latest. If the Department refunds the taxpayer the overpayment before this deadline, the Department does not owe the taxpayer any interest on the refund. However, IC § 6-8.1-9-2(c) then states that if the Department misses this deadline, then the Department owes the taxpayer interest on the refund, and this interest is calculated from when the claim for refund was filed.

The claim for refund, according to IC § 6-8.1-9-1(a) and [45 IAC 15-9-2](#), can only be made by Taxpayer. Therefore, by implication, this means that a claim for refund must be filed for interest to be calculated on a refund, irrespective of which date triggered the 90-day countdown. In other words, the filing of a claim for refund, is the condition precedent for the Department owing any interest on a refund. Interest is owed only when a refund is issued pursuant to a claim for refund, which, by definition, can only be initiated by a taxpayer, and then only if the Department does not refund the overpayment within the stated deadline.

Per IC § 6-8.1-9-2(a), when the Department finds an overpayment, the Department is required to apply that overpayment against any amount of that same tax that is assessed and is currently due. Also 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.

In the case where the Department finds an overpayment as a result of its investigation of a claim for refund, IC § 6-8.1-9-2(c) requires the Department to refund the overpayment to the taxpayer within 90 days of the latest of the triggering dates referenced in IC § 6-8.1-9-2(c) to avoid paying interest on the refund. If the Department misses the 90-day deadline, then the Department would owe the taxpayer interest on the amount refunded as of the date the claim for refund was filed (per amended (c) effective Jan. 1, 2007).

In the case where the Department finds an overpayment of tax outside the context of an investigation of a, by definition taxpayer-initiated, claim for refund, the Department is still obligated to follow the refund procedure set out in IC § 6-8.1-9-2(a) for the overpayment. However, since there is no taxpayer-initiated claim for refund the obligation to pay interest under IC § 6-8.1-9-2(c) is absent.

Lastly, Taxpayer points to delay due to auditor health issues. This consideration is not a legal factor. However, it should be noted that the auditor's absence as a result of surgery lasted for three days during the Thanksgiving week in 2006. This "delay" was minor and did not affect the ultimate timing of the audit conclusion. Moreover, the argument could be made that the difficult formatting in which Taxpayer presented its information to the Department during the audit consumed as much, if not more, time as the auditor's brief absence did. It stands to reason that whatever "delays" may have occurred were a reasonable part of an audit process. The audit was exhaustive and took a considerable amount of time with much back and forth between Taxpayer and auditor. The audit itself is well documented and its completion date is not a legal issue.

Even if the Department had, for the sake of argument, the authority to claim a refund on behalf of Taxpayer upon completion of the audit, interest would not have been due to Taxpayer on the refund because the Department issued the refund on March 1, 2007, well within 90 days of the completion of the audit on January 9, 2007.

FINDING

Taxpayer's protest is respectfully denied.

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