

Letter of Findings Number: 01-20130544
Tax Administration
For Tax Year 2009

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUE

I. Tax Administration—Statute of Limitations.

Authority: IC § 6-3-4-8; IC § 6-8.1-9-1.

Taxpayer protests that he should be allowed to amend his 2009 Indiana tax return.

STATEMENT OF FACTS

Taxpayer filed a protest requesting that he be allowed to amend his 2009 Indiana tax return. An administrative hearing was conducted and this Letter of Findings results. Further facts will be presented as required.

I. Tax Administration—Statute of Limitations.

DISCUSSION

Taxpayer's representative sent the Indiana Department of Revenue ("Department") a protest letter stating:

When we prepared the . . . taxpayer's 2009 Indiana return, form IT-40PNR, we made an error, misreading his W2. His W2 lists 2 line items in box 17 for State Income Tax withheld, . . . with no state initials by either line in that box. Our preparer assumed both belonged to MN [Minnesota] when she should have noted, based on box 15, that the \$539 was Indiana withheld.

Taxpayer states that in 2013 that the Minnesota Department of Revenue "sent its first and only letter to taxpayer, indicating that they found a discrepancy in the amount of MN tax withheld and reported as withheld on the MN return filed. The result is that MN is asking for a payment of the full \$539 IN withheld" Taxpayer then states that it is requesting "that Indiana make an exception to its statute of limitations for taxpayer to amend his 2009 Indiana return"

The Department notes that there are two different statutes that deal with time limitations for refunds—IC § 6-3-4-8 and IC § 6-8.1-9-1. Taxpayer does not address which statute is applicable to its facts. IC § 6-3-4-8 states:

(h) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for the employee's taxable year which begins in such calendar year, and a return made by the employer under subsection (b) shall be accepted by the department as evidence in favor of the employee of the amount so deducted from the employee's wages. Where the total amount so deducted exceeds the amount of tax on the employee as computed under this article and [IC 6-3.5](#), the department shall, after examining the return or returns filed by the employee in accordance with this article and [IC 6-3.5](#), refund the amount of the excess deduction. However, under rules promulgated by the department, the excess or any part thereof may be applied to any taxes or other claim due from the taxpayer to the state of Indiana or any subdivision thereof . No refund shall be made to an employee who fails to file the employee's return or returns as required under this article and [IC 6-3.5](#) within two (2) years from the due date of the return or returns. In the event that the excess tax deducted is less than one dollar (\$1), no refund shall be made. (Emphasis added).

IC § 6-8.1-9-1 states in relevant part:

(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. (Emphasis added).

Taxpayer's accounting firm states that it made an error in Taxpayer's 2009 Indiana return; Taxpayer sought to amend his 2009 Indiana return in September of 2013. Regardless of which statute is in fact applicable (i.e., IC § 6-3-4-8 or IC § 6-8.1-9-1), Taxpayer is outside of the statute of limitations under either statute. IC § 6-3-4-8 states " No refund shall be made to an employee who fails to file the employee's return or returns as required under this article and [IC 6-3.5](#) within two (2) years from the due date of the return or returns," and IC § 6-8.1-9-1 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). Therefore Taxpayer's protest is denied.

FINDING

Taxpayer's protest is denied.

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