

Letter of Findings: 04-20160149
Gross Retail (Sales) and Use Tax
For the Years 2010, 2011, 2012, 2013, and 2014

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Indiana Fast Food Restaurant was not entitled to an additional refund because it failed to properly claim the refund using the required form prescribed by the Department.

ISSUE

I. Sales and Use Tax - Claim for Refund.

Authority: IC § 6-8.1-9-1; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); 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 n.9 (Ind. Tax Ct. 2012); Indiana Dep't of State Rev. v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014); Medco Health Solutions, Inc. v. Indiana Dep't of State Revenue, 9 N.E.3d 263 (Ind. Tax Ct. 2014); ANR Pipeline Co., v. Indiana Dep't of State Revenue, 672 N.E.2d 91 (Ind. Tax Ct. 1996); Adkins v. City of Tell City, 625 N.E.2d 1298 (Ind. Ct. App. 1993); [45 IAC 15-9-2](#); Commissioner's Directive 13 (October 2015).

Taxpayer claims that it is entitled to additional refund of tax than the audit determined.

STATEMENT OF FACTS

Taxpayer is a fast food restaurant. In 2015, the Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer's business records for the tax years 2010, 2011, 2012, 2013, and 2014 ("Tax Years at Issue"). Both Taxpayer and the Department agreed to utilize a statistical sampling methodology to project the audit results for the expense purchases. Pursuant to the audit, the Department made various adjustments which resulted in an assessment for tax year 2010 and a substantial refund for tax years 2011 through 2014. The Department subsequently applied a portion of the refund to satisfy Taxpayer's 2010 assessment and refunded the remainder. Taxpayer did not file a Claim for Refund (GA-110L) form in relation to the audit. The Department did not issue any letter of refund denial as the audit concluded. The final audit report, which was provided to Taxpayer on October 29, 2015, stated, in relevant part:

This report resulted in a refund; the refund reflected is net of any adjustments made. If you do not agree with the adjustments you have the right to appeal the findings. Any appeal must be filed within 60 days after the date of the letter denying or approving the refund.

In a letter dated December 30, 2015, Taxpayer protested the Department's audit findings stating that it "requests an administrative hearing as a result of the Notice of Proposed Assessment. . . ." An administrative hearing was held May 17, 2016. This Letter of Findings results. Additional facts will be provided as necessary.

I. Sales and Use Tax - Claim for Refund.

DISCUSSION

The Department's audit resulted in a net refund to Taxpayer for the Tax Years at Issue. Taxpayer claims that it is entitled to additional refunds because its overpayments of Indiana gross retail tax were greater than what was determined by the Department's audit.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. 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); see also Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." Indiana Dep't of State Rev. v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

In general, if a taxpayer believes that it has overpaid tax, the taxpayer is required to timely file a claim for a refund with the Department. Specifically, IC § 6-8.1-9-1(a), in relevant part, states:

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 . . . [I]n 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).**

[45 IAC 15-9-2](#) further explains, in relevant part, that:

(b) 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](#).

...
(d) When filing a claim for refund with the department the taxpayer's claim shall set forth:

- (1) the amount of refund claimed;
- (2) a sufficiently detailed explanation of the basis of the claim such 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.

The claim for refund shall be filed on a form prescribed by the department.

(Emphasis added).

Thus, when a taxpayer determines that it overpaid sales or use tax, for example in a situation like this, the taxpayer must file a GA-110L form as prescribed by the Department in order to claim a refund. IC § 6-8.1-9-1(a); [45 IAC 15-9-2](#); Commissioner's Directive 13 (October 2015), 20151125 Ind. Reg. 045150407NRA. The taxpayer also must clearly state "the amount of the refund," "detailed explanation of the basis of the claim such that the department may determine its correctness," "the tax period for which the overpayment is claimed," and "the year and date of the overpayment." [45 IAC 15-9-2](#).

IC § 6-8.1-9-1(b), in relevant part, further states that:

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 person disagrees with a part of the decision, the person may file a protest and request a hearing with the department. The department shall mail a copy of the decision to the person who filed the protest. **(Emphasis added).**

In *Medco Health Solutions, Inc. v. Indiana Dep't of State Revenue*, the taxpayer, Medco Health Solutions, Inc. ("Medco"), argued that it was entitled to a refund and requested the auditor consider its refund claim during the audit without filing any form prescribed by the Department to claim the refund. *Medco Health Solutions, Inc. v.*

Indiana Dep't of State Revenue, 9 N.E.3d 263 (Ind. Tax Ct. 2014). The Indiana Tax Court ruled in favor of the Department, explaining that Medco's "request" for "refund from auditor during the audit" was not a filing of a refund claim because "a claim for refund generally must be filed on the form prescribed by the Department." Id. at 266. "The Department has no legal method of generating a claim for refund on its own[.]" Id. The court further concluded that "the Department's final determination cannot constitute a denial of a claim for refund because it only addresses Medco's protest of the Proposed Assessments, not whether the auditor ever considered that Medco overpaid any tax." Id.

In this case, the Department's audit resulted in an assessment for tax year 2010 and refunds for tax years 2011 - 2014. Taxpayer protests the 2010 assessment and generally states that during the audit, Taxpayer "identified and presented additional overpayments of Indiana gross retail taxes . . . [and] presented these overpayments and reductions to the auditor for review . . . but the auditor declined to grant adjustments or credits for these items." In its protest letter, Taxpayer requests refunds for these overpayments and reductions. Further, Taxpayer referenced a letter dated August 12, 1998, in which the Department granted Taxpayer partial exemptions on certain pieces of equipment. Taxpayer now asks that such equipment be given a full exemption. This Letter of Findings addresses those issues as follows.

First, in regards to 2010, Taxpayer claims that the Department erroneously assessed tax and protests certain purchases of refrigerant and refrigerator replacement parts which it believes should be exempt, resulting in an additional refund. However, according to the audit report, tax was properly paid on these purchases and additional tax was not assessed as a result of the audit. Therefore, Taxpayer's protest related to these items for tax year 2010 is a claim for refund, not a protest of the proposed assessment. As to the remaining tax years, Taxpayer claimed that it identified certain overpayments during the audit which it "presented . . . to the auditor for review . . . but the auditor declined to grant adjustments or credits for these items." Taxpayer thus asserts that it is entitled to additional refund and requests that the Department refund those overpayments.

Upon review, however, the Department must decline Taxpayer's request. As mentioned earlier, to claim a refund of overpayment of sales or use tax, a taxpayer must file its refund claim on a form prescribed by the Department. That is, for refund of sales/use tax purposes, Taxpayer must file a GA-110L, which is a form prescribed by the Department.

Taxpayer, however, did not make its claims "on a form prescribed by the Department," a requirement affirmed in Medco. Thus, similar to the taxpayer in Medco, in the absence of a claim for refund properly filed on the form GA-110L prescribed by the Department, the Department is not able to determine if Taxpayer is entitled to an additional refund. Taxpayer's remedy is not a tax protest, but rather a properly filed claim for refund. When that properly filed refund claim is denied by the Department on initial review, Taxpayer may protest that refund denial.

To state it differently, in the absence of the properly filed GA-110L form claiming the additional refund, the Department has no way of knowing or determining whether Taxpayer was entitled to that additional refund. Thus, when Taxpayer filed its protest on December 30, 2015, no refund claim had been denied so the right to protest a refund denial was not available pursuant to IC § 6-8.1-9-1(b).

In short, pursuant to the above mentioned Indiana law and Medco decision, Taxpayer is required to file a GA-110L form to claim the additional refund, but Taxpayer failed to do so. Without the properly filed GA-110L form and a letter of refund denial, the Department has no statutory authority to address Taxpayer's protest of whether it is entitled to that additional refund at issue. Only after the Department initially reviews and denies such a claim is the remedy of a tax protest available. Taxpayer has not been deprived its remedy and the statute of limitations has not tolled.

FINDING

Without the Department's initial refund denial of a properly filed claim for refund, Taxpayer's remedy for additional refund is not a protest.

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