

**Supplemental Final Order Denying Refund: 01-20160518R
Individual Income Tax
For the Year 1985**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Final Order Denying Refund.

HOLDING

The Department held that Individual was not entitled to a refund of 1985 income taxes paid under the terms of Indiana's 2015 Amnesty initiative; Individual provided no evidence that the payment was made under duress or that the amount of tax was miscalculated.

ISSUE

I. Individual Income Tax - Amnesty Refund.

Authority: IC § 6-8.1-3-17(c); IC § 6-8.1-3-24(a); Emergency Rule 15-240(E) § 13(2); Emergency Rule 15-240(E) § 15(g).

Taxpayer argues he is entitled to a refund of income tax paid during Indiana's 2015 Amnesty initiative on the ground that he paid the tax under duress in the belief that he would be arrested if he did not pay.

STATEMENT OF FACTS

Taxpayer is an individual who moved to Indiana and who owed 1985 Indiana income taxes. During the lead up to Indiana's 2015 Amnesty initiative, the Indiana Department of Revenue ("Department") contacted Taxpayer informing him that he had the opportunity to pay the \$392 in overdue taxes and that - by doing so - he would avoid paying interest and penalties on that amount.

Taxpayer paid the \$392 in October 2015. Subsequently in November 2015, Taxpayer had second thoughts. Taxpayer argued that he did not owe 1985 tax, that he had made the October payment under duress, and that he was now entitled to a refund of the \$392.

In response to Taxpayer's refund request, the Indiana Department of Revenue ("Department") issued Taxpayer a letter dated June 2016 denying Taxpayer the refund. The letter stated:

Amnesty payments are nonrefundable. In addition, you have not shown reasonable cause for filing the above-mentioned tax return without remittance. Therefore, all tax was assessed correctly.

Taxpayer protested the Department's decision denying the refund. An administrative hearing was conducted by telephone during which Taxpayer explained the basis for the protest. A Final Order Denying Refund was issued November 2016.

Taxpayer disagreed with the conclusion and requested a rehearing arguing that he would be able to provide additional evidence justifying the refund. The rehearing request was granted, a rehearing was conducted, and this Supplemental Final Order Denying Refund results.

I. Individual Income Tax - Amnesty Refund.

DISCUSSION

Taxpayer argues that he is entitled to a refund of the 1985 income tax because he paid the tax in 2015 only because the Department threatened to arrest him if he did not do so.

The Indiana legislature authorized the Department to conduct an Amnesty initiative. It did so by passing IC §

6-8.1-3-17(c) which provides in part as follows:

The department shall establish an amnesty program for taxpayers having an unpaid tax liability for a listed tax that was due and payable for a tax period ending before January 1, 2013. A taxpayer is not eligible for the amnesty program:

- (1) for any tax liability resulting from the taxpayer's failure to comply with [IC 6-3-1-3.5\(b\)\(3\)](#) with regard to the tax imposed by [IC 4-33-13](#) or [IC 4-35-8](#); or
- (2) if the taxpayer participated in any previous amnesty program under:
 - (A) this section (as in effect on December 31, 2014); or
 - (B) [IC 6-2.5-14](#).

The time in which a voluntary payment of tax liability may be made (or the taxpayer may enter into a payment program acceptable to the department for the payment of the unpaid listed taxes in full in the manner and time established in a written payment program agreement between the department and the taxpayer) under the amnesty program is limited to the period determined by the department, not to exceed eight (8) regular business weeks ending before the earlier of the date set by the department or January 1, 2017. The amnesty program must provide that, upon payment by a taxpayer to the department of all listed taxes due from the taxpayer for a tax period (or payment of the unpaid listed taxes in full in the manner and time established in a written payment program agreement between the department and the taxpayer), entry into an agreement that the taxpayer is not eligible for any other amnesty program that may be established and waives any part of interest and penalties on the same type of listed tax that is being granted amnesty in the current amnesty program, and compliance with all other amnesty conditions adopted under a rule of the department in effect on the date the voluntary payment is made, the department:

- (1) shall abate and not seek to collect any interest, penalties, collection fees, or costs that would otherwise be applicable;
- (2) shall release any liens imposed;
- (3) shall not seek civil or criminal prosecution against any individual or entity; and
- (4) shall not issue, or, if issued, shall withdraw, an assessment, a demand notice, or a warrant for payment under [IC 6-8.1-5-1](#), [IC 6-8.1-5-3](#), [IC 6-8.1-8-2](#), or another law against any individual or entity;

(Emphasis added).

The legislature simultaneously passed IC § 6-8.1-3-24(a) which directed the Department to adopt emergency rules governing the administration of the Amnesty.

The department of state revenue may adopt emergency rules under [IC 4-22-2-37.1](#) to carry out a tax amnesty program under section 17 of this chapter.

At the direction of the legislature, the Department issued those rules which were dutifully enacted and made effective July 27, 2014.

In part the rule states:

No amount paid in attempted compliance with an amnesty agreement shall be refunded to a taxpayer. Emergency Rule 15-240(E) § 15(g), 20150729 Ind. Reg. 045150240ERA.

However, the rule does allow for a refund of an amnesty payment under limited circumstances as described in Emergency Rule 15-240(E) § 13(2) which states that "[i]f the Department determines . . . the overpayment was due to a computational error; that overpayment may be refunded to the taxpayer."

Although Taxpayer is currently a resident of Illinois, Taxpayer is a long-time filer of Indiana individual income tax returns having filed for and paid Indiana income tax up to and including 2015. Taxpayer is also the owner/operator of two separate Indiana businesses both of which filed for and paid various Indiana taxes up to and including 2015.

The November 2016 decision found as follows:

Taxpayer makes no argument that the 1985 assessment was attributable to a simple computational error (e.g. $2 + 2 = 5$). Instead there existed an unaccounted for individual income tax liability for which Taxpayer had some 30 years to resolve before deliberately taking advantage of the opportunity provided him in 2015.

....

Whatever buyer's remorse Taxpayer has in regards to taking advantage of the Amnesty, he chose to take advantage of the 2015 initiative, reaped substantial benefits from doing so, and now cannot claim a refund clearly and specifically precluded under the Department's lawfully enacted regulations.

Despite assurances to the contrary, Taxpayer has produced no new evidence that the decision to pay under the terms of the 2015 Amnesty was made under threat of arrest, that the payment was attributable to a wholesale misunderstanding on the part of the Department, or that the 1985 assessment resulted from a serious miscalculation of the amount owed.

Taxpayer made a straight-forward decision to participate in the 2015 amnesty and to reap the substantial benefits for doing so. Setting aside the numerous penalties which would have attached themselves to the 1985 assessment by 2015, Taxpayer benefited by avoiding \$1,165 in interest charges which had accrued against the 1985 liability.

Admittedly, neither the Department nor the Taxpayer can be aware of all the exact circumstances which surrounded this 30-year old assessment. What can be known is that Indiana law permits a refund of money paid under the terms of the 2015 Amnesty under very limited circumstances. Those circumstances do not exist here.

FINDING

Taxpayer's protest is respectfully denied.

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