

**Letter of Findings: 01-20160587P
Individual Income Tax
For Tax Year 2011**

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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.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

Individual was not entitled to a refund of individual income tax because he did not follow departmental procedures for filing a claim for refund prior to filing a legal protest; Individual was not entitled to abatement of late payment penalties and interest because he failed to show that the late payment was due to reasonable cause.

ISSUES

I. Tax Administration - Refunds.

Authority: IC § 6-8.1-9-1; Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Wendt LLP v. Ind. Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Ind. Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); UACC Midwest, Inc. v. Indiana Dep't of State Revenue, 629 N.E.2d 1295 (Ind. T.C. 1994); [45 IAC 15-9-2](#); Commissioner's Directive 13 (August 2010).

Taxpayer protests the payment of individual income tax.

II. Tax Administration - Penalties and Interest.

Authority: IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of late payment penalties and interest.

STATEMENT OF FACTS

Taxpayer is a non-resident individual and member of an Indiana limited liability company ("Company"). The Company purchased a retail center in Terre Haute, Indiana in 2003 by assuming the mortgage and note on the property. Taxpayer was a guarantor on the mortgage and note. In December 2009, the Company defaulted on the mortgage. In December 2010, Taxpayer and the noteholder entered into a Discounted Payoff Agreement whereby the noteholder agreed to accept a lesser amount in satisfaction of the existing note.

In May 2016, Taxpayer filed his Indiana IT-40PNR individual income tax return for tax year 2011. He paid a total of \$18,681 in individual income tax. The Indiana Department of Revenue ("Department") subsequently assessed Taxpayer additional amounts for late payment penalty and interest and issued Taxpayer a proposed assessment.

Taxpayer filed the instant protest and requested that the Department review the tax imposed and previously paid, and also asked the Department to abate the penalties and interest. A telephonic administrative hearing was held and this Letter of Findings results. Further facts will be supplied as necessary.

I. Tax Administration - Refunds.

DISCUSSION

Taxpayer protests the amount of tax paid for the 2011 tax year and asks the Department to review the tax reported by Taxpayer. In reviewing a taxpayer's argument, the Indiana Supreme Court has held that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). In addition, a taxpayer is required to provide

documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Ind. Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Ind. Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

IC § 6-8.1-9-1 provides:

(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 (j) and (k), 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) 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 on the claim, the person may file a protest and request a hearing with the department.** 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. **(Emphasis added).**

Furthermore, [45 IAC 15-9-2](#) provides, in relevant part:

(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](#).**

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](#).

...

(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).

The Department further reiterates the requirements for properly claiming a refund in Commissioner's Directive 13 (August 2010), 20100728 Ind. Reg. 045100472NRA, which states, in relevant part:

The claim for refund must be filed on a Claim for Refund (Form GA-110L), an amended income tax return, or a withholding tax return (Form WH-3) that indicates an overpayment of tax.

[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 taxpayer is entitled to the refund. **(Emphasis added).**

A claim for refund may also be made by filing an amended return with the Department containing the information required by [IC 6-8.1-9-1](#) within the statutory time period for filing a refund claim. *UACC Midwest, Inc. v. Indiana Dep't of State Revenue*, 629 N.E.2d 1295, 1299 (Ind. T.C. 1994).

In this instance, Taxpayer submitted a protest letter to "request a review of the tax imposed[.]" Taxpayer argues that the reduction in value of the real property should offset the gain he received with the reduction of the loan amount on the property. However, Taxpayer never filed a GA-110L form requesting a refund of the amount he believed he overpaid, nor did he file an amended return to request a refund of any alleged overpayment. Thus, Taxpayer did not trigger a right to protest payment of the tax. Furthermore, even if Taxpayer had followed the proper procedure for requesting a refund, he has provided no argument or documentation to show what he believes the correct amount of tax should have been, or upon what basis he believes he is entitled to a refund. Generally requesting a "review" is not sufficient for the Department to determine whether Taxpayer correctly filed and paid individual income tax.

In the absence of the designated form or an amended return requesting a refund, the Department has no legal authority to issue a refund in response to Taxpayer's request to review the tax paid, and the Department cannot address the merits of the Taxpayer's request for a "review." Thus, the Department is not able to agree that Taxpayer met its burden of showing that it is entitled to a refund of the tax paid.

FINDING

Taxpayer's protest is respectfully denied.

II. Tax Administration - Penalties and Interest.

DISCUSSION

Taxpayer protests the imposition of penalties pursuant to IC § 6-8.1-10-2.1 and the imposition of interest pursuant to IC § 6-8.1-10-1. The Department notes that waiver of interest is not permitted under IC § 6-8.1-10-1(e). Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect.

[45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

"Negligence", on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#)(c) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer provided no explanation for the late filing of his Indiana IT-40PNR individual income tax return, and therefore has not shown that he had reasonable cause for the late payment. Taxpayer has not affirmatively established that he exercised ordinary business care in this case. Therefore, waiver of penalties is not warranted under [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest with respect to the abatement of late payment penalties and interest is respectfully denied.

SUMMARY

Taxpayer's Issue I protest regarding the imposition of individual income tax is denied. Taxpayer's Issue II protest regarding the imposition of penalties and interest is denied.

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An [html](#) version of this document.