

**Final Order Denying Refund: 01-20170114R
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 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Final Order Denying Refund.

HOLDING

Individuals were not entitled to a refund of individual income tax because they did not follow departmental procedures for filing a claim for refund prior to filing a legal protest.

ISSUE

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); Medco Health solutions, Inc. v. Ind. Dep't of State Revenue, 9 N.E.3d 263 (Ind. Tax Ct. 2014); [45 IAC 15-9-2](#); Commissioner's Directive 13 (August 2010).

Taxpayers protest the denial of refund of individual income tax.

STATEMENT OF FACTS

Taxpayers are non-resident individuals filing Indiana income tax returns on Indiana sourced income. In January 2017, Taxpayer requested a refund of tax paid on their 2011 Indiana income tax return. The Indiana Department of Revenue ("Department") denied Taxpayers' request stating that Taxpayers were out of statute to request a refund.

Taxpayers filed the instant protest and requested that the Department grant the refund, or allow Taxpayers to file a 2011 amended return requesting the refund. A telephone hearing was held and this Letter of Findings results. Further facts will be supplied as necessary.

I. Tax Administration - Refunds.

DISCUSSION

Taxpayers protest the amount of tax paid for the 2011 tax year and ask the Department to allow Taxpayers to file a 2011 amended return and refund the amount of tax paid.

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).

Taxpayers request the Department to allow an amended return be filed and grant the subsequent refund. Taxpayers provided their 2011 federal extension, extending Taxpayers' filing requirements until October 15, 2012. Taxpayers also provided their "client copy" of the 2011 return. In addition, the Department's records show payment of the income tax on January 12, 2012. Taxpayers however did not provide any proof of the return being sent to the Department or proof that the Department received the return, such as a certified mail receipt or similar

documentation. The Department has no record of receiving Taxpayers' 2011 return or having the return send back to the Taxpayers via returned mail.

Furthermore, Taxpayers are requesting to file an amended return claiming a refund more than three years from the 2011 tax year filing deadline. Taxpayers have not provided a GA-110L requesting a refund, nor a filed amended return requesting a refund. As stated in [45 IAC 15-9-2](#), "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](#)." This determination is further supported by the Indiana Tax Court's ruling in *Medco Health solutions, Inc. v. Indiana Dep't of Revenue*, stating that "The Department has no legal method of generating a claim for refund on its own; rather, a claim for refund can only be initiated by a taxpayer pursuant to the procedure set forth in Indiana Code § 6-8.1-9-1. 45 Ind. Admin. Code 15-9-2(b) (2003)." 9 N.E.3d 263, 266 (Ind. T.C. 2014). Thus, the Department has no authority to allow Taxpayers to file an amended return that is outside of the three year statute of limitations. In addition, Taxpayers have not followed the appropriate steps set out in IC § 6-8.1-9-1 to request a refund. Thus, the Department does not have standing to grant Taxpayers' request. Furthermore, even if Taxpayers showed a verifiably filed 2011 return the statute of limitations to request a refund expired on October 15, 2015, three years after October 15, 2012.

FINDING

Taxpayer's protest is denied.

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