

**Memorandum of Decision: 01-20170225R**  
**Individual Income tax**  
**For the Year 2010**

**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 Memorandum of Decision.

**HOLDING**

The Department's decision denying Individual a refund of individual tax was wrong because the refund was not barred by the statute of limitations; Individual submitted the amended tax return within three years of the date the amount was levied from Individual's bank account.

**ISSUE**

**I. Individual Income Tax - Statute of Limitations.**

**Authority:** IC § 6-8.1-9-1(a).

Taxpayer argues he is entitled to a refund of individual income tax and that the Department's decision denying the refund was erroneous.

**STATEMENT OF FACTS**

Taxpayer is an individual who files Indiana income tax returns. The Internal Revenue Service sent Taxpayer a CP-2000, "Notice of Underreported Income," dated March 2012. Taxpayer filed amended federal and Indiana income tax returns in attempt to address the federal adjustment. The Indiana Department of Revenue ("Department") assessed Taxpayer additional individual income tax based on the federal adjustment. When the assessment went unpaid, the Department's collection agency levied money from Taxpayer's bank account. Taxpayer filed a second amended return April 2015. In a letter dated November 2016, the Department denied Taxpayer a refund of \$3,635 on the ground that the refund was barred by the statute of limitations.

Taxpayer disagreed with the decision and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Memorandum of Decision results.

**I. Individual Income Tax - Statute of Limitations.**

**DISCUSSION**

The issue is whether Taxpayer is barred by the statute of limitations from obtaining a refund of income tax.

The Department's November 2016 letter denied the refund because "[y]our original return requesting the refund was not received before the two (2) year period had expired. Therefore, your claim for refund in the amount of \$3,635.00 has been denied." The Department relied on and cited to IC § 6-3-4-8(h) as the basis for its decision denying the refund.

The Department's reliance on IC § 6-3-4-8(h) is misplaced because the statute was repealed by P.L.149-2015 effective July 1, 2015. The statute governing the issue is found at IC § 6-8.1-9-1(a) which provides in part as follows:

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.

The \$3,635 was levied from Taxpayer's bank account June 2015. In effect, the purported liability was "paid" by Taxpayer on the date of the levy. Taxpayer's amended 2010 return was received by the Department May 2015. The return was filed to address the original federal adjustment. Taxpayer maintains that the federal adjustment was wrong because the adjustment was - as Taxpayer explains - "mainly due to taxes being assessed on securities without any underlying basis."

At this point, it is important to note what this decision is not about; it is not about "basis" or "securities" or the merits of the federal adjustment. This decision simply addresses the timeliness of Taxpayer's refund request. Based on the information provided, the Department was wrong and the Taxpayer is right. The refund is not barred by the three-year statute of limitations.

### **FINDING**

Taxpayer's protest is sustained.

*Posted: 08/30/2017 by Legislative Services Agency*  
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