

**Final Order Denying Refund: 01-20170348R
Individual Income Tax
For Tax Year 2012**

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 Final Order Denying Refund.

HOLDING

Individual was not entitled to a refund of individual income tax paid during tax amnesty because she expressly waived her right to protest or request a refund of the amnesty amount under the terms of the amnesty agreement.

ISSUE

I. Tax Administration - Tax Amnesty - Refunds.

Authority: IC § 6-8.1-3-17; IC § 6-8.1-3-24; *Scopelite v. Ind. Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Ind. Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Wiles v. Indiana Dep't of State Revenue*, 881 N.E.2d 105 (Ind. Tax Ct. 2008); Department of State Revenue Emergency Rule 15-240(E).

Taxpayer protests the denial of a claim for refund for tax year 2012.

STATEMENT OF FACTS

Taxpayer is an individual residing in Indiana. In August 2015, the Indiana Department of Revenue ("Department") issued a proposed assessment to Taxpayer for additional tax due for the 2012 tax year. Subsequent to the proposed assessment, the Department sent Taxpayer a 2015 Tax Amnesty Program notice informing Taxpayer that penalties, interest, and collection fees would be waived if she agreed to pay the base tax amount as part of the amnesty program. Taxpayer made the amnesty payment in satisfaction of the outstanding 2012 tax liability on September 15, 2015.

Taxpayer sent a letter to the Department on February 1, 2016, asking for a refund of the amnesty amount. She did not file a GA-110L Request for Refund form and the Department did not issue a refund denial letter. Nevertheless, Taxpayer filed the instant protest in April 2017. An administrative phone hearing was held and this Final Order Denying Refund results. Further facts will be provided as necessary.

I. Tax Administration - Tax Amnesty - Refunds.

DISCUSSION

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, 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).

With respect to tax year 2012, Taxpayer entered into an amnesty agreement with the Department. IC § 6-8.1-3-17(a) provides:

(a) Before an original tax appeal is filed with the tax court under [IC 33-26](#), the commissioner may settle any tax liability dispute if a substantial doubt exists as to:

- (1) the constitutionality of the tax under the Constitution of the State of Indiana;
- (2) the right to impose the tax;
- (3) the correct amount of tax due;
- (4) the collectability of the tax; or

(5) whether the taxpayer is a resident or nonresident of Indiana.

...

(c) 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.

Thus, the Department was authorized by the Indiana Legislature to settle outstanding tax liabilities, even when the validity of that tax obligation is uncertain. In exchange for the settlement payment, the Department agrees to "abate and not seek to collect any interest, penalties, collection fees, or costs that would otherwise be applicable . . . release any liens imposed . . . not seek civil or criminal prosecution against any individual or entity; and . . . not issue, or, if issued, shall withdraw, an assessment, a demand notice, or a warrant for payment." IC § 6-8.1-3-17(c)(1)-(4).

The Department was authorized to adopt emergency rules to carry out the tax amnesty program under IC § 6-8.1-3-24. Department of State Revenue Emergency Rule 15-240(E) § 6(c) further provides, "A taxpayer who enters into an amnesty payment plan agreement shall comply with a written agreement stating the requirements of the payment plan." The requirements of the amnesty program are found in Department of State Revenue Emergency Rule 15-240(E) § 11, which states:

(a) A taxpayer who participates in the amnesty program must agree to all provisions contained in SECTIONS 6 through 8 of this document. The taxpayer acknowledges all terms of the amnesty agreement when they sign the coupon that is to be sent to the department when the taxpayer pays the liability.

(b) A taxpayer who remits and agrees to amnesty through the department's amnesty website by clicking on the "I accept the terms of the agreement" checkbox is consenting to all terms contained in the amnesty agreement.

(c) A taxpayer agreement is completed when the taxpayer:

- (1) signs the amnesty agreement and returns the amnesty payment coupon to the department;
- (2) files amended returns to report a previous tax deficiency; or
- (3) files an initial return, if the taxpayer failed to file and remit for the tax period, and remits the required payment.

(d) A taxpayer may appoint a personal representative to sign the amnesty agreement. However, the taxpayer shall complete a power of attorney (Form POA-1) giving the representative authorization to sign on behalf of the taxpayer.

(e) To participate successfully in the amnesty program, the taxpayer must:

- (1) pay in full all amnesty eligible liabilities;
- (2) relinquish all rights to protest, appeal, or litigate a tax liability that is being paid;**
- (3) agree not to file a claim for refund of any tax paid under the amnesty program; and**
- (4) comply with subsection (a).

(f) Notwithstanding subsection (e), a taxpayer may participate successfully in the amnesty program if the taxpayer pays in full an amount established under a settlement agreement with the department if that settlement agreement was entered into in conjunction with the current amnesty program.
(Emphasis added).

Thus, when a taxpayer voluntarily pays an outstanding tax liability under the amnesty program, "she agree[s] to be bound by the terms of the agreement, which provided, *inter alia*, that she would not file a claim for refund of the tax paid." *Wiles v. Indiana Dep't of State Revenue*, 881 N.E.2d 105, 107 (Ind. Tax Ct. 2008).

Because Taxpayer entered into an amnesty agreement with the Department for her 2012 individual income tax obligation, she affirmatively waived her right to protest, appeal, litigate, or file a claim for refund of any tax paid under the amnesty program. The Indiana Tax Amnesty Payment Coupon signed by Taxpayer states on its face that the taxpayer agrees to give up the right to protest or file a claim for refund of amounts selected for amnesty. The protest with respect to tax paid in 2012 is improper per the terms of the amnesty agreement signed by Taxpayer, and therefore must be denied.

FINDING

Taxpayer's protest is respectfully denied.

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