

**Final Order Denying Refund: 02-20170112R
Adjusted Gross Income Tax
For Tax Years 2007 to 2014**

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

Corporation was unable to prove that it filed its 2007 - 2014 corporate income tax returns in a timely manner, thus the refund that Corporation claimed on its 2014 return was reduced.

ISSUE

I. Income Tax—Imposition.

Authority: IC § 6-3-4-3; IC § 6-8.1-5-1; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; IC § 6-8.1-8-2; 26 C.F.R. § 1.6072-2.

Taxpayer protests the denial of a refund claimed on its 2014 Corporate Income Tax Return.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation. Taxpayer believes that for tax years 2007 to 2014 it filed timely Indiana Corporate Income Tax Returns (IT-20s). Further, Taxpayer states that each IT-20 resulted in an overpayment to be applied to the following year's estimated tax with the exception of the 2014 IT-20 which resulted in an overpayment of \$20,607, which Taxpayer wished to have refunded. As of the date of its Protest, Taxpayer has only received approximately half of this amount.

Taxpayer contacted the Indiana Department of Revenue ("Department") and a review was conducted. According to the review, Taxpayer had "refunds/ estimated payments that were out of statute [that] you were trying to carry forward. The corporate refund carry forward were out of statute from 2006 - 2011 and disallowed."

Taxpayer timely protested this review. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Order Denying Refund addresses Taxpayer's protest. Additional facts will be provided as necessary.

I. Income Tax— Imposition.

DISCUSSION

According to the Department's review, the refunds and estimated payments that Taxpayer attempted to carryforward each year were out of statute. Taxpayer disagreed, stating that its returns were filed timely.

Indiana corporate returns are due on "the [fifteenth] day of the month following the due date of the federal tax return." IC § 6-3-4-3. Federal corporate income tax returns are due "on or before the fifteenth day of the third month following the close of the taxable year." 26 C.F.R. § 1.6072-2. Therefore, unless an extension has been filed, a calendar year corporation such as Taxpayer, must file its IT-20 on or before April 15 of the year following the taxable year. Thus, Taxpayer must have filed its 2007 IT-20 on or before April 15, 2008, its 2008 IT-20 must have been filed by April 15, 2009, and so on. According to the Department's records, Taxpayer did not file its 2007, 2008, 2009, 2010, 2011, 2012, 2013 or 2014 IT-20s until at least July 24, 2015.

If the Department reasonably believes that a Taxpayer has not reported the proper amount of tax due, the Department will make a proposed tax assessment using the best information it has available to it. IC § 6-8.1-5-1(b). When a taxpayer fails to file a return, that taxpayer is subject to both penalties and interest. The interest for a failure to file a return is calculated using the adjusted rate established by the commissioner and is applied to the full amount of the unpaid tax due from the due date for payment. IC § 6-8.1-10-1. The penalty for failure to file a return is ten percent of the amount of tax due. IC § 6-8.1-10-2.1.

When Taxpayer failed to timely file its IT-20s, the Department created bills for each year based on the best information available to it. When Taxpayer filed its returns in 2015, the overpayments were applied to the outstanding amounts, resulting in a reduced refund for tax year 2014.

Additionally, the bills created tax liabilities that were subject to interest and penalty as well as collection by tax warrant under IC § 6-8.1-8-2. A liability was created for tax year 2013. Because Taxpayer had not filed its IT-20s, there were no overpayments in their account to cover the liability. Therefore, a demand noticed was mailed to the Taxpayer notifying Taxpayer that it had twenty days "from the date the department mails the notice to either pay the amount demanded or show reasonable cause for not paying the amount demanded." *Id.* Taxpayer did not pay the amount demanded or respond otherwise, thus a tax warrant was issued against Taxpayer and was recorded, creating a judgment against Taxpayer. *Id.* A lien was placed on Taxpayer and an amount was collected. The Department explained to the Taxpayer, in a letter dated September 14, 2016, that a portion of that collection was applied to a tax year 2013 liability. The remainder was carried forward to tax year 2014.

Taxpayer claims that it filed its IT-20s timely and therefore is entitled to a full refund, however, Taxpayer did not provide evidence that the returns were timely filed. Without such evidence, Taxpayer's protest is denied.

FINDINGS

Taxpayer's protest is denied.

Posted: 10/25/2017 by Legislative Services Agency
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