

**Memorandum of Decision: 01-20170253R
Individual Income Tax
For the Year 2009**

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 is provided for the convenience of the reader and is not part of the analysis contained in this document.

HOLDING

Individual had two proposed assessment liabilities for Indiana individual income tax for 2009. One of the two liabilities was part of Tax Amnesty in 2015, the other liability was not. Individual did not establish that the Department's collection agency was in error for levying his bank account for the liability owed for the non-Tax Amnesty liability. Individual was sustained regarding his protest of the penalty.

ISSUE

I. Individual Income Tax - Claim for Refund.

Authority: IC § 6-8.1-3-17; IC § 6-8.1-5-1; IC § 6-8.1-8-4; IC § 6-8.1-8-8; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-5-1](#).

Taxpayer protests the Department's denial of his claim for refund.

STATEMENT OF FACTS

Taxpayer filed a protest with the Indiana Department of Revenue ("Department") regarding a Claim for Refund that he had filed. Taxpayer protested the Department's denial of his refund claim, which included collection fees related to the levying of his bank account. An administrative hearing was conducted and this Memorandum of Decision results.

I. Individual Income Tax - Claim for Refund.

DISCUSSION

Taxpayer, in an April 25, 2017 letter, states that he is protesting the Department's "decision to deny the claim of \$2,602.50 which was garnished" from his banking account "on November 16, 2016 due to a Notice of Levy from the Indiana Department of Revenue." Taxpayer further states that his accountant telephoned a representative of the Department on December 9, 2016. Taxpayer states that during that telephone call it was determined that an "error occurred within the respective department of which the Amnesty program had not recorded [Taxpayer's] payment" and that Taxpayer would receive a refund of the \$2,602.50. However, Taxpayer then states that he later received a notice that his "claim had been denied."

IC § 6-8.1-3-17 established the Tax Amnesty Program. That statute states in relevant part:

(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. A taxpayer is not eligible for the amnesty program:

- (1) for any tax liability resulting from the taxpayer's failure to comply with [IC 6-3-1-3.5](#)(b)(3) with regard to the tax imposed by [IC 4-33-13](#) or [IC 4-35-8](#); or
- (2) if the taxpayer participated in any previous amnesty program under:
 - (A) this section (as in effect on December 31, 2014); or
 - (B) [IC 6-2.5-14](#).

The time in which a voluntary payment of tax liability may be made (or the taxpayer may enter into a payment program acceptable to the department for the payment of the unpaid listed taxes in full in the manner and time established in a written payment program agreement between the department and the taxpayer) under the amnesty program is limited to the period determined by the department, not to exceed eight (8) regular business weeks ending before the earlier of the date set by the department or January 1, 2017. The amnesty

program must provide that, upon payment by a taxpayer to the department of all listed taxes due from the taxpayer for a tax period (or payment of the unpaid listed taxes in full in the manner and time established in a written payment program agreement between the department and the taxpayer), entry into an agreement that the taxpayer is not eligible for any other amnesty program that may be established and waives any part of interest and penalties on the same type of listed tax that is being granted amnesty in the current amnesty program, and compliance with all other amnesty conditions adopted under a rule of the department in effect on the date the voluntary payment is made, the department:

- (1) shall abate and not seek to collect any interest, penalties, collection fees, or costs that would otherwise be applicable;
- (2) shall release any liens imposed;
- (3) shall not seek civil or criminal prosecution against any individual or entity; and
- (4) shall not issue, or, if issued, shall withdraw, an assessment, a demand notice, or a warrant for payment under [IC 6-8.1-5-1](#), [IC 6-8.1-5-3](#), [IC 6-8.1-8-2](#), or another law against any individual or entity;

for listed taxes due from the taxpayer for the tax period for which amnesty has been granted to the taxpayer. Amnesty granted under this subsection is binding on the state and its agents. However, failure to pay to the department all listed taxes due for a tax period invalidates any amnesty granted under this subsection for that tax period. The department shall conduct an assessment of the impact of the tax amnesty program on tax collections and an analysis of the costs of administering the tax amnesty program. As soon as practicable after the end of the tax amnesty period, the department shall submit a copy of the assessment and analysis to the legislative council in an electronic format under [IC 5-14-6](#). The department shall enforce an agreement with a taxpayer that prohibits the taxpayer from receiving amnesty in another amnesty program.

(d) For purposes of subsection (c), a liability for a listed tax is due and payable if:

- (1) the department has issued:
 - (A) an assessment of the listed tax under [IC 6-8.1-5-1](#);
 - (B) a demand for payment under [IC 6-8.1-5-3](#); or
 - (C) a demand notice for payment of the listed tax under [IC 6-8.1-8-2](#);
- (2) the taxpayer has filed a return or an amended return in which the taxpayer has reported a liability for the listed tax; or
- (3) the taxpayer has filed a written statement of liability for the listed tax in a form that is satisfactory to the department.

Also of import are the statutes that deal with collection fees and levying. IC § 6-8.1-8-4, states:

(a) When the department collects a judgment arising from a tax warrant, it may proceed in the same manner that any debt due the state is collected, except as provided in this chapter. The department may employ special counsel or contract with a collection agency for the collection of a delinquent tax plus interest, penalties, collection fees, sheriff's costs, clerk's costs, and reasonable fees established under subsection (b) if:

- (1) an unsatisfied warrant has been issued by the department; or
- (2) the department received a tax payment by check or other instrument drawn upon a financial institution, and the check or other instrument was not honored by that institution.

(b) The commissioner and the budget agency shall set the fee that the special counsel or collection agency will receive and payment of the fee shall be made after a claim for that fee has been approved by the department.

(c) The fees become due and owing by the taxpayer upon the filing of an amended warrant with the circuit court clerk adding the fee authorized by subsection (b) to the amount of the judgment lien under section 2 of this chapter.

IC § 6-8.1-8-8(1) states that the Department "may levy upon the property of the taxpayer that is held by a financial institution by sending a claim to the financial institution."

Taxpayer's argument can be summarized thusly: he had an Indiana tax liability that was eligible for the Tax Amnesty Program, that he participated in the Tax Amnesty Program, and that the Department nonetheless—through the Department's collection agency—levied Taxpayer's bank account. Sorting out the timeline of events will clarify whether or not Taxpayer's argument is correct. That timeline is as follows:

- August 20, 2015. The Department mailed a letter to Taxpayer that states in part: "[b]ased on information reported to the Indiana Department of Revenue, you may have unreported income for tax year 2009. You must file an Indiana return if you were an Indiana resident or had Indiana income and were required to file a federal income tax return."

- September 28, 2015. The Department mailed to Taxpayer a proposed assessment in the amount of \$2,155.91 (base tax, penalty and interest) for liability number 2009-08550734. That proposed assessment stated, "You were previously issued a best information available notice" and that "[t]his liability reflects an amount due based on the reported tax for this period. If your reported tax due is in excess of our estimated liability, you may receive an additional notice." (Note: the last sentence states that there was a possibility of receiving an additional notice).
- October 30, 2015. Taxpayer filed an IT-40PNR ("Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return) for 2009 with the Department. That IT-40PNR was processed by the Department on October 30, 2015. The return is dated by Taxpayer for August 27, 2015. The return is filled out with all zeros. Taxpayer also provided a notarized letter stating for 2009 he resided outside the United States.
- November 4, 2015. The Department issued a Demand Notice for liability number 2009-08752257 in the total amount of \$1,027.25—of which \$711 comprises the "Tax Balance (Individual Income)." That Demand Notice also states in relevant part that Taxpayer was "previously issued a Best Information Available notice but subsequently filed the missing return. This liability reflects an amount due based on the reported tax for this period. If your reported tax due is in excess of our estimated liability, you may receive an additional notice."
- November 19, 2015. The Department mailed a letter with a Tax Amnesty Payment Coupon at the bottom of it to Taxpayer. Noted within that mailing is that it is for liability number 2009-08752257. Within that letter are multiple listed amounts due for the liability, one of which was \$711 (which would be the Tax Amnesty amount for that specific liability number (i.e., 2009-08752257)).
- November 24, 2015. The Department issued a letter to Taxpayer, noting in part: "Your 2009 tax return was adjusted to reflect additional income. Information is shared between DOR and the IRS, and we were notified that an additional assessment was made by the IRS for the tax period of 2009. Consequently, your balance is currently \$2104.00."
- November 25, 2015. The Department processed Taxpayer's Tax Amnesty payment of \$711; the payment is postmarked November 16, 2015.
- November 30, 2015. The Department issued a Demand Notice for liability number 2009-08550734.
- April 7, 2016. Warrant for Collection of Tax is issued.
- April 12, 2016. Letter from the Department's collection agency to Taxpayer. The letter stated that Taxpayer owes \$2,560.54.
- November 10, 2016. Notice of Levy from the Department's collection agency.
- November 16, 2016. Notice from Taxpayer's bank regarding the levy.

With that timeline of events in place, the cause of the confusion becomes apparent: there were two different liability numbers for the year 2009 for Taxpayer's individual income tax. Those two liability numbers are 2009-08550734 (see September 28, 2015) and 2009-08752257 (see November 4, 2015). The reason for the two liability numbers was that the Department initially issued a "best information available" ("BIA") proposed liability. IC § 6-8.1-5-1(b) is the applicable BIA statute, and states in relevant part: "If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department." See also [45 IAC 15-5-1](#). The Department then received information from the IRS that *increased* Taxpayer's 2009 Indiana individual income liability (in other words, the Department's BIA proposed assessment was too low). Those two proposed liabilities, taken together, comprised the actual amount owed by Taxpayer for Indiana individual income tax for 2009. Only one of the two liabilities was actually part of the Tax Amnesty Program (namely, 2009-08752257), which left the other liability to eventually be turned over to the Department's collection agency.

Taxpayer has not established that he did not owe the complete liability for Indiana individual income tax for 2009. To the extent that Taxpayer's refund claim represents remaining base tax and interest that he owed, Taxpayer's protest is denied (interest cannot be waived pursuant to IC § 6-8.1-10-1(e) since the liability at issue was not in fact part of Tax Amnesty). Taxpayer is also denied regarding the portion that relates to collection fees since it was incumbent upon Taxpayer to find out why he was receiving a Demand Notice and later a Warrant for Collection of Tax *after his Tax Amnesty payment*. That tax warrant was issued in April of 2016 and the actual levy did not occur

until November of 2016. Turning to the penalty, the Department finds that under IC § 6-8.1-10-2.1 there was "reasonable cause and not . . . willful neglect" for Taxpayer's failure to pay the liability owed. Taxpayer is sustained regarding the penalty.

FINDING

Taxpayers' protest is partially sustained and partially denied. Regarding the penalty portion Taxpayer is sustained; Taxpayer's protest is denied regarding all other issues.

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