

Letter of Findings: 02-20170398
Corporate Income Tax
Tax Period February 2016

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 requires 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Letter of Findings.

HOLDING

Company did not timely file its 2014 IT-20 which created a cascading effect which resulted in the Department correctly disallowing Company's offsetting credits in Company's 2016 IT-20.

ISSUE

I. Corporate Income Tax - Carry Forward Refunds.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4; 6-8.1-10-1; IC § 6-8.1-10-2.1; *P/S, Inc. v. Ind. Dep't of State Revenue*, 853 N.E.2d 1051 (Ind. Tax Ct. 2006); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the Department's assessment.

STATEMENT OF FACTS

Taxpayer is an out-of-state business with Indiana operations. Taxpayer timely filed its 2016 IT-20 corporate income tax claiming a refund. The Department adjusted Taxpayer's return, which resulted in an assessment. Taxpayer protested the assessment. An administrative hearing was held, and this decision results. Additional facts will be provided as necessary.

I. Corporate Income Tax - Carry Forward Refunds.

DISCUSSION

As a threshold issue, it is the taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

"[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to an 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).

Taxpayer protests the Department's assessment of additional corporate income tax due. In 2016 Taxpayer timely filed its Indiana corporate income tax which claimed a credit for overpayment from its 2015 Indiana IT-20. Taxpayer filed its 2015 Indiana IT-20 return December 3, 2015 claiming an overpayment credit from its 2014 Indiana IT-20. However, Taxpayer's 2014 IT-20 was not filed until April 12, 2016. Since, Taxpayer did not file its 2014 IT-20 until April 12, 2016 the carryforward for its 2015 IT-20, which was previously filed, could not occur. The Department therefore, assessed Taxpayer for additional corporate income tax due for the tax year 2015; the liability staged to collections. As a result, the Department billed Taxpayer for base tax, penalty, interest, and collection fees. When Taxpayer later filed its 2014 IT-20, the Department applied the stated overpayment to offset the 2015 tax, penalty, interest, and collection fees. Therefore, only \$47 could be carried forward to the 2015 or 2016 tax year.

If the Department reasonably believes that a taxpayer has not reported the proper amount of tax due, the Department shall propose an assessment of unpaid tax based on the best information available to the Department. IC § 6-8.1-5-1(b). The amount of the proposed assessment "is considered a tax payment not made by the due date" and is subject to penalties and interest. *Id.* Pursuant to IC § 6-8.1-10-2.1(b), the Department may assess a penalty if the taxpayer fails to make full payment.

Indiana imposes interest on overdue tax pursuant to IC § 6-8.1-10-1(a), which states:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

Notice of the proposed assessment shall be sent to the taxpayer stating that it has sixty (60) days in which to pay the assessment or file a written protest. IC § 6-8.1-5-1(b) and (d). If the taxpayer does not pay the proposed assessment or file a written protest in the sixty (60) day period "[t]he department shall demand payment, as provided in IC § 6-8.1-8-2(a), of any part of the proposed tax assessment, interest, and penalties" IC § 6-8.1-5-1(j). In these situations, the Department "shall make the demand for payment in the manner provided in IC § 6-8.1-8-2." IC § 6-8.1-5-1(k).

IC § 6-8.1-8-2 provides that the Department must issue a demand notice for payment which grants the taxpayer a ten (10) day period of time in which to "either pay the amount demanded or show reasonable cause for not paying the amount demanded." IC § 6-8.1-8-2(a). If a taxpayer "does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs," and other fees. IC § 6-8.1-8-2(b). When it has issued a tax warrant, the Department may contract with a collection agency to collect delinquent tax plus interest, penalties, collection fees, and other fees and costs. IC § 6-8.1-8-4(a). Additionally, "a collection fee of ten percent (10 [percent]) of the unpaid tax is added to the total amount due." IC § 6-8.1-8-2(b). When a tax warrant is filed, "the total amount of the tax warrant becomes a judgment against the person owing the tax." IC § 6-8.1-8-2(e).

In this case, Taxpayer failed to timely file its 2014 IT-20. The Department sent Taxpayer a proposed assessment for sales tax due based on the best information available to the Department, i.e. the BIA Assessment. Further, the Department sent Taxpayer a demand notice for payment of the sales tax, penalties, and interest identified in the BIA Assessment. When Taxpayer did not pay the demanded amount or show reasonable cause for not paying it, the Department issued a tax warrant for the sales tax, penalty, interest, and collection fees.

The Department incurred fees based on a valid assessment that advanced to a tax warrant. The fees collected are proper if the fees were assessed based on the information available to the Department at the time the fees are collected rather than at some time after collection. Additionally, the collection fees were not retained by the Department, but rather by a third party that collects on behalf of the Department, and therefore, in the absence of Department error, the Department is not able to refund the collection fees.

In *P/S, Inc. v. Ind. Dep't of State Revenue*, the tax court concluded that the taxpayer was responsible for paying collection fees because it had not rebutted the presumption that it received the notices which the Department mailed. *P/S, Inc. v. Ind. Dep't of State Revenue*, 853 N.E.2d 1051, 1054-55 (Ind. Tax Ct. 2006).

In this case, Taxpayer failed to timely file its IT-20 for tax year 2014, in which its refund was to be carried forward to tax year 2015, which resulted in an assessment for 2015. This 2015 assessment was not timely protested or paid by Taxpayer which resulted in the Department incurring collections fees. Upon Taxpayer's filing of its 2014 IT-20, the Department applied the stated overpayment to offset the 2015 tax, penalty, interest, and collection fees. Therefore, only \$47 could be carried forward to the 2015 or 2016 tax year. Thus, Taxpayer's failure to timely file its 2014 IT-20 created a cascading effect that reduced Taxpayer's offsets resulting in a 2016 corporate income tax liability. Taxpayer has not met its burden under IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

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