

Final Order Denying Refund: 03-20170904
Withholding Tax
For Tax Years 2010 and 2011

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HOLDING

Business was not entitled to refund of withholding taxes because the statute of limitations had expired several years before the claim was made.

ISSUE

I. Withholding Taxes—Statute of Limitations.

Authority: IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014); *Medco v. Indiana Dept. of State Revenue*, 9 N.E.3d 263 (Ind. Tax 2014).

Taxpayer protests the denial of a claim for refund.

STATEMENT OF FACTS

Taxpayer is an Indiana-based business. Taxpayer filed W-2 withholding taxes for an employee during the tax years 2010 and 2011. In 2017, Taxpayer filed a claim for refund on those withholding taxes, based on revised W-2s. The Indiana Department of Revenue ("Department") denied the claim on the basis that the statute of limitations had expired. Taxpayer protested the denial. An administrative hearing was held, and this Final Order Denying Refund results. Additional facts will be provided as necessary.

I. Withholding Taxes—Statute of Limitations.

DISCUSSION

Taxpayer protests the denial of its claim for refund of withholding taxes it withheld and remitted for one of its employees during the years 2010 and 2011. Taxpayer filed the claim for refund when it issued revised W-2 forms to the employee. Taxpayer explains that it had withheld Indiana state income taxes from the employee when in fact the employee was not subject to those taxes for those years. The Department denied the claim for refund on the basis that the claim was made after the statute of limitations for making such a claim had expired. Taxpayer states that the reason it did not make the claim earlier was that it was unaware that it needed to make a claim for refund. Taxpayer assumed that the Department would have automatically refunded any excess amounts.

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

IC § 6-8.1-9-1(a) provides:

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 (f) and (g), 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.*

For purposes of this section, the due date for a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax is the end of the calendar year which contains the taxable period for which the return is filed. The claim must set

forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund.

(*Emphasis added*).

Next, the Indiana Tax Court has addressed this issue in *Medco v. Indiana Dept. of State Revenue*, 9 N.E.3d 263 (Ind. Tax 2014), when it provided:

The Department has no legal method of generating a claim for refund on its own; rather, a claim for refund can only be initiated by a taxpayer pursuant to the procedure set forth in Indiana Code § 6-8.1-9-1. 45 IND. ADMIN. CODE 15-9-2(b) (2003). Indiana Code § 6-8.1-9-1 provides that "[i]f 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." IND.CODE § 6-8.1-9-1(a) (2003) (amended 2012) (*emphasis added*). "[I]n order to obtain the refund, the person must *file* the claim with the department within three (3) years after the latter of ... [t]he due date of the return [or t]he date of payment." *Id.* (*emphasis added*). Furthermore, the claim must include certain information such as the amount of the refund to which the person is entitled, the reasons why the person is entitled to the refund, the tax period for which the overpayment is claimed, and the year and date of the overpayment. *Id.*; 45 I.A.C. 15-9-2(d). Finally, a claim for refund generally must be filed on the form prescribed by the Department. See 45 I.A.C. 15-9-2(d); *UACC Midwest, Inc. v. Indiana Dep't of State Revenue*, 629 N.E.2d 1295, 1298 (Ind. Tax Ct.1994) (explaining that although the taxpayer did not use the Department's prescribed form, its amended returns complete with explanatory statements qualified as claims for refund because they provided the Department with the information required by both Indiana Code § 6-8.1-9-1 and 45 I.A.C. 15-9-2). *Id.* at 266. (*Emphasis in original*). (**Emphasis added**).

Thus, a taxpayer who believes that it has overpaid any kind of tax must file a claim for refund with the Department. As explained by the court in *Medco*, the Department has no method of generating a claim for refund on its own.

The documentation and analysis provided in the protest process show that Taxpayer became aware of the discrepancy in 2015 and that its third-party payroll service submitted a letter to the Department requesting the refund. Taxpayer also states that it submitted two letters in 2016 requesting the refund and only learned in 2017 that it was required to submit a refund claim form GA-110L to the Department. Taxpayer believes that the Department was aware of the excess payment and that it should have refunded those amounts on its own.

The Department does not agree with Taxpayer's conclusion. Fundamentally, the Department cannot generate refunds, as confirmed by the court in *Medco*. Further, by Taxpayer's own explanation, no one was aware that there was a potential overpayment until 2015. The Department does not agree that it was in any way responsible for investigating Taxpayer's potential overpayment of its employee's state withholding taxes. Taxpayer has not referred to any statute, regulation, or court case which establishes such an obligation on the Department's behalf. Additionally, there is the matter that the taxes in question were withheld from the employee. Taxpayer merely withheld and remitted those taxes. The proper party to claim a refund would be the employee, since it was his money that was withheld. However, that point is moot since the claim for refund was not submitted until four years past the expiration of the statute of limitations established by IC § 6-8.1-9-1(a) and as confirmed by the court in *Medco*.

FINDING

Taxpayer's protest is denied.

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