

**Final Order Denying Refund: 01-20180236
Individual Income Tax
For The Tax Year 2016**

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 did not establish that her employer remitted state income tax to Indiana. Therefore, the claim for refund was properly denied.

ISSUE

I. Income Tax–Refund.

Authority: IC § 6-3-5-1; IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [45 IAC 3.1-1-77](#); Income Tax Information Bulletin 33.

Taxpayers protest the denial of a claimed refund of income tax.

STATEMENT OF FACTS

Taxpayer is an individual who lives out-of-state but who is employed in Indiana. Taxpayer filed a claim for refund of Indiana state taxes for the year 2016 on the basis that her employer remitted the state income tax withheld to Indiana rather than her home state, with whom Indiana has a reciprocal income tax agreement. The Indiana Department of Revenue ("Department") determined that no state income tax was remitted to Indiana in 2016 and that no refund was due. Taxpayer protested the denial of refund and filed a protest with the Department. Taxpayer opted for the Department to make its decision based on the material provided and without an administrative hearing. This Final Order Denying Refund results. Further facts will be supplied as required.

I. Income Tax–Refund.

DISCUSSION

Taxpayer protests the Department's denial of Taxpayer's claim for refund of state income tax for 2016. The Department based its denial on the basis that Taxpayer did not establish that her employer remitted any state income tax to Indiana on her behalf in 2016. Taxpayer protests that her home state's taxing authority denied her claim for credit for taxes paid by her employer to Indiana on the basis that the employer should have withheld and remitted income tax to Taxpayer's home state rather than to Indiana. Also, as a preliminary matter, Taxpayer includes a payment for Indiana county income tax in her claim for refund. The Department notes that, under IC § 6-3.6-2-2 Indiana county income tax is withheld at the non-resident rate for employees who work in that county but who are not Indiana residents. As stated above, Taxpayer lived in another state but worked in Indiana. Therefore, Taxpayer's protest regarding county income tax is *prima facie* incorrect.

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) states:

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.

In this case, Taxpayer timely filed a claim for refund of taxes she believed were overpaid to Indiana for the year 2016.

Next, IC § 6-3-5-1 states:

The tax imposed by [IC 6-3-2](#) on the adjusted gross income derived from sources within the state of Indiana by persons who are nonresidents of this state, shall not be payable if the laws of the state or territory of residence of such persons, at the time such adjusted gross income was earned in this state, contained a reciprocal provision by which residents of this state were exempted from taxes imposed by such state on income earned in such state.

Next, [45 IAC 3.1-1-77](#) provides:

A credit is allowed against adjusted gross income tax imposed upon nonresidents who reside in states which grant similar credits to Indiana residents who become subject to tax under the laws of those states. The Indiana credit (reverse credit) is the amount of income tax actually paid to the taxpayer's resident state but only on income derived from Indiana sources, or two percent (2[percent]) of such income, whichever is less. The list of those states which grant a similar credit and the method for computing the allowable amount of credit are outlined under Regulation 6-3-3-3(a)(020) [[45 IAC 3.1-1-75](#)].

In order to claim this credit, the taxpayer must file an Indiana Part-Year or Nonresident Tax Return along with a certified copy of the return filed with his resident state, reporting income which is subject to tax under this Act and under the laws of taxation of the other state.

In this case, Taxpayer was a nonresident who earned income from employment in Indiana and did file an Indiana nonresident tax return, as required by [45 IAC 3.1-1-77](#).

Finally, Income Tax Information Bulletin 33 (August 2008) 20080827 Ind. Reg. 045080660NRA (2008) provides:

Indiana has established reciprocity agreements with Kentucky, Michigan, Ohio, Pennsylvania, and Wisconsin concerning the collection of income tax from nonresidents employed in Indiana. These agreements provide that Indiana will not impose adjusted gross income tax on the salaries, wages, tips, and commissions earned by the legal residents of states with reciprocity who work in Indiana.
Id. 2.

Taxpayer did reside in one of the listed reciprocal states and, as provided by IC § 6-3-5-1, [45 IAC 3.1-1-77](#), and Income Tax Information Bulletin 33, Taxpayer's employer was required to collect and remit state income tax to Taxpayer's home state at Taxpayer's home state's rate.

After review of the documentation supplied by Taxpayer in the protest process, the Department is unable to agree with Taxpayer's protest. Box 15 and Box 17 of Taxpayer's 2016 W-2 plainly state that Taxpayer's employer withheld Taxpayer's home state income tax at Taxpayer's home state's rate. Taxpayer's pay stub from her employer lists state income tax withholding for Taxpayer's home state at Taxpayer's home state rates. Neither of these documents lists Indiana as the state for which income tax was withheld. Nor do the income tax rates match Indiana's income tax rate for 2016.

Taxpayer also provided a notice from her home state's taxing authority which states:

CREDIT FOR TAX PAID TO A RECIPROCAL STATE ON WAGES HAS BEEN DISALLOWED. OUR RECIPROCAL AGREEMENT PROVIDES FOR TAXPAYERS TO BE TAXED BY THEIR STATE OF RESIDENCE AND NOT THE STATE WHERE INCOME IS EARNED. STATES INCLUDED FOR RECIPROCITY ARE IL, IN, MI, OH, VA, WV, AND WI. YOU MUST FILE A RETURN WITH THE RECIPROCAL STATE TO RECOVER YOUR WITHHOLDING.
(All capital letters in original).

The Department acknowledges that the notice does discuss reciprocal states, that it does advise filing a return to recover withholding, and that Indiana is listed among the reciprocal states in question. However, the Department also notes that the notice does not say that income tax was withheld and remitted to Indiana. Rather, the notice only states that credit will not be given for tax paid to a reciprocal state. Of much greater relevance is the fact that the notice has a calculation of state tax due on page one in which Taxpayer's home state taxing authority lists a total state income liability and then gives a credit for state income tax already paid to Taxpayer's home state. The amount of credit for taxes already paid to Taxpayer's home state is virtually identical to the amount being claimed as a refund from Indiana.

In short, Taxpayer's employer correctly withheld and remitted state income tax to Taxpayer's home state. Taxpayer's employer did not withhold or remit state income taxes to Indiana. Since no state income tax was remitted to Indiana, there is nothing to refund. Indiana county income tax was correctly paid, as previously discussed.

FINDING

Taxpayer's protest is denied.

April 30, 2018

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