

DEPARTMENT OF STATE REVENUE

01-20180710R.ODR

**Final Order Denying Refund: 01-20180710R
Individual Income Tax
For the Years 2010, 2011, and 2012**

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

Individuals' request for a refund of individual income tax was untimely because Individuals failed to give Indiana the 180 day notice of the refund following the IRS adjustment to their federal returns.

ISSUE

I. Individual Income Tax - Timeliness of Amended Returns.

Authority: IC § 6-3-4-6; IC § 6-3-4-6 (*Effective January 1, 2011 to June 30, 2015*); IC § 6-3-4-6(b); IC § 6-3-4-6(c); IC § 6-3-4-6(d); IC § 6-8.1-9-1(a); IC § 6-8.1-9-1(f); IC § 6-8.1-9-1(f) (*Effective July 1, 2012 to June 30, 2015*); IC § 6-8.1-9-1(f)(2).

Taxpayers argue that their amended 2010, 2011, and 2012 individual income tax returns were timely filed and that they were entitled to the refunds claimed on those returns.

STATEMENT OF FACTS

Taxpayers are individuals who file joint Indiana individual income tax returns. According to Taxpayers, they timely filed original 2010, 2011, and 2012 federal and Indiana income tax returns.

The Internal Revenue Services ("IRS") audited Taxpayers' federal returns. The IRS audit concluded in July 2012.

In September 2012, Taxpayers protested the IRS adjustments with the "IRS Appeals Office."

In November 2014, the IRS issued a "Notice of Deficiencies," i.e. additional tax.

In February 2015, Taxpayers challenged the IRS assessment in the United States Tax Court.

On September 26, 2016, Taxpayers entered into an agreement with the IRS resulting in additional carry-forward losses. The agreement - entered in the U.S. Tax Court - allowed Taxpayers to carry forward the pass-through losses to the 2010 through 2012 tax years.

On September 22, 2017, Taxpayers filed amended 2010, 2011, and 2012 federal and Indiana income tax returns carrying forward the losses and - in the case of the Indiana returns - seeking refunds. According to Taxpayers, the IRS accepted the amended returns.

The Indiana Department of Revenue ("Department") denied the refunds in letters issued in December 2017. The letters explained:

Indiana Code 6-8.1-9-1(a) requires that a claim for refund of excess withholding or estimated payments must be filed with a 3 year period in order to be refunded excess withholding or estimated payments. This 3 year period generally begins on the due date of the tax return that should have been filed for the period in question. Your claim requesting the refund was not received before the 3 year period had expired. Therefore, your claim for the refund in the amount of [] has been denied.

Taxpayers disagreed with the Department's decision denying the refunds and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayers' representatives explained the basis for the protest. This Final Order Denying Refund results.

I. Individual Income Tax - Timeliness of Amended Returns.

DISCUSSION

The issue is whether Taxpayers timely requested a refund of Indiana income tax when Taxpayers filed amended 2010, 2011, and 2012 Indiana income tax returns.

Taxpayers explain that they were entitled to the refunds based on I.R.C. §§ 1311, 1312, 1313, and 1314. Taxpayers' representatives explain:

IRC section 1311 is the general provision that allows for the filing of a corrected return following a determination. IRC section 1312(4) provides that a circumstance when an adjusted return can be made is if there was a double disallowance of a deduction or credit which is this case. Then IRC section 1313(a)(1) defines the term "determination" as [a] decision by the Tax Court. IRC section 1314(b) then provides the time period for filing the corrected return, stating that a corrected return must be filed for the taxable years at issue *"as if on the date of the determination one year remained before the expiration of period of limitation on assessment or filing a claim for refund for such taxable years."*

(Taxpayers' emphasis).

Since Taxpayers' amended return is based on a federal adjustment, the question of timeliness is addressed in IC § 6-8.1-9-1(f) (*Effective July 1, 2012 to June 30, 2015*) because that is the *Indiana* statute in effect at the time the IRS notified Taxpayers of the adjustment. The statute provides as follows:

If a taxpayer's federal income tax liability for a taxable year is modified by the Internal Revenue Service, and the modification would result in a reduction of the tax legally due, the due date by which the taxpayer must file a claim for refund with the department is the later of:

- (1) the date determined under subsection (a); or
- (2) the date that is one hundred eighty (180) days after the date on which the taxpayer is notified of the modification by the Internal Revenue Service.

IC § 6-8.1-9-1(a), referenced within the statute, is the general three-year statute of limitations in which to claim a refund. However, the issue falls within the rule found at IC § 6-8.1-9-1(f)(2); did Taxpayers submit the 2010, 2011, and 2012 amended return within 180 days after the date on which it was notified of the modification by the Internal Revenue Service?

In addition, IC § 6-3-4-6 (*Effective January 1, 2011 to June 30, 2015*) provides:

(a) Any taxpayer, upon request by the department, shall furnish to the department a true and correct copy of any tax return which he the taxpayer has filed with the United States Internal Revenue Service which copy shall be certified to by the taxpayer under penalties of perjury.

(b) Each taxpayer shall notify the department of any modification of:

- (1) a federal income tax return filed by the taxpayer after January 1, 1978; or
- (2) the taxpayer's federal income tax liability for a taxable year which begins after December 31, 1977.

The taxpayer shall file the notice on the form prescribed by the department within one hundred twenty (120) days after the modification is made if the modification was made before January 1, 2011, and one hundred eighty (180) days after the modification is made if the modification is made after December 31, 2010.

(c) If the federal modification results in a change in the taxpayer's federal or Indiana adjusted gross income, the taxpayer shall file an Indiana amended return within one hundred twenty (120) days after the modification is made if the modification was made before January 1, 2011, and one hundred eighty (180) days after the modification is made if the modification is made after December 31, 2010.

Therefore, if the IRS adjusts a taxpayer's income tax return and the adjustment results in a "reduction" of the tax legally due, IC § 6-3-4-6(b) requires that a taxpayer file a "notice" with the Department within 180 days of that adjustment, and IC § 6-3-4-6(c) requires that a taxpayer file a "claim for refund" with the Department within 180 days of the date the taxpayer is notified of the federal adjustment.

IC § 6-8.1-9-1(f) and IC § 6-3-4-6 act in consort; if the taxpayer's federal return is modified, the taxpayer is required to give the Department notice within 180 days of the modification and is required to file a claim for refund within 180 days of the modification.

The 180 day "notification" requirement was triggered by the IRS November 2014 "Notice of Deficiencies." There is no indication that Taxpayers provided Indiana the statutorily mandated notice.

Even assuming for the moment that the 180-day time limitation as found under the current version of IC § 6-3-4-6 (*Effective July 1, 2015*) was triggered by the September 26, 2016, agreement between Taxpayers and the IRS allowing Taxpayers to carry forward the formerly disputed pass-through losses, the September 26 agreement would have been the date under current IC § 6-3-4-6(d) which would have triggered Taxpayers' obligation to give Indiana the statutorily required notice. Given that trigger date, Taxpayers would have been required to give notice and file their Indiana refund claim by March 25, 2017, 180 days after the federal notification was made. Under either version of the statute, Taxpayers failed to meet the 180-day requirement delaying until September 27, 2017, before filing the returns.

Under IC § 6-8.1-9-1(f) and IC § 6-8.1-9-1(a), Taxpayers' refund request was untimely.

FINDING

Taxpayers' protest is respectfully denied.

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