

Final Order Denying Refund: 01-20181260R
Indiana Individual Income Tax
For the 2013 Tax Year

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 determination.

HOLDING

Individuals were not entitled to a refund of tax overpayment of their estimated payments made during 2013. Individuals failed to demonstrate that they timely filed the required Indiana Full-Year Resident Return (Form IT-40) reporting their income in order to claim the refund.

ISSUE

I. Indiana Individual Income Tax - Claim for Refund - Statute of Limitations.

Authority: IC § 6-8.1-9-1; [45 IAC 15-9-2](#); Commissioner's Directive 13 (June 2012).

Taxpayers protest the Department's refund denial of individual income tax for the 2013 tax year.

STATEMENT OF FACTS

Taxpayers (Husband and Wife) are Indiana residents who have income subject to Indiana income tax. Taxpayers do not have tax withheld on income they receive. Rather, Taxpayers elected to make periodically estimated payments for each tax year and subsequently filed "married-filing-jointly" federal and state income tax returns, claiming the refunds of their overpayments.

For the tax year 2013, Taxpayers made several estimated payments for Indiana income tax purposes. Nonetheless, Taxpayers did not file their 2013 Indiana Full-Year Resident Individual Income Tax Return (Form IT-40) on or before the due date, April 15, 2014. Taxpayers eventually filed the IT-40 return for the 2013 tax year in early March 2018, claiming that they were entitled to a refund of the overpayment, in the amount of \$1,579.

Upon review, the Indiana Department of Revenue ("Department") denied Taxpayers' refund claim because their refund claim (i.e., the 2013 return) was not timely filed.

Taxpayers protested the refund denial. Taxpayers requested that the Department make the final determination without conducting an administrative hearing. This Final Order Denying Refund results based on the information submitted by Taxpayers as well as the Department's records. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Claim for Refund - Statute of Limitations.

DISCUSSION

In early March 2018, Taxpayers filed their 2013 Indiana income tax return (IT-40), claiming that they were entitled to a refund of their overpayment for the 2013 year. The Department denied Taxpayers' refund claim on the ground that the refund claim was not timely.

In general, if a taxpayer believes that he or she has overpaid the tax, the taxpayer is required to timely file a claim for a refund with the Department. Specifically, IC § 6-8.1-9-1(a) (in effect July 1, 2017 through March 14, 2018), in relevant part, states:

- (a) **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 (j) and (k), **in order to obtain the refund, the person must file the claim with the department within three (3) years after the [later] 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).**

[45 IAC 15-9-2](#) further explains, in relevant part, that:

(b) **The department has no legal method of generating a claim for refund. A claim for refund can only be initiated pursuant to [IC 6-8.1-9-1](#).**

...

(d) When filing a claim for refund with the department the taxpayer's claim shall set forth:

(1) the amount of refund claimed;

(2) a sufficiently detailed explanation of the basis of the claim such that the department may determine its correctness;

(3) the tax period for which the overpayment is claimed; and

(4) the year and date the overpayment was made.

The claim for refund shall be filed on a form prescribed by the department. (Emphasis added).

Thus, when a taxpayer determines he or she overpaid tax, for example in a situation like this, the taxpayer must file his or her income tax return stating the overpayment as prescribed by the Department in order to claim a refund. IC § 6-8.1-9-1(a); [45 IAC 15-9-2](#); Commissioner's Directive 13 (June 2012), 20120530 Ind. Reg. 045120241NRA. The taxpayer also must clearly state "the amount of the refund," "detailed explanation of the basis of the claim such that the department may determine its correctness," "the tax period for which the overpayment is claimed," and "the year and date of the overpayment." [45 IAC 15-9-2](#).

IC § 6-8.1-9-1(b), in relevant part, further states that:

After considering the claim and all evidence relevant to the claim, the department shall issue a decision on the claim, stating the part, if any, of the refund allowed and containing a statement of the reasons for any part of the refund that is denied. The department shall mail a copy of the decision to the person who filed the claim. If the person disagrees with a part of the decision on the claim, the person may file a protest and request a hearing with the department . . . **(Emphasis added).**

In this instance, upon initial review of Taxpayers' 2013 filing, the Department denied Taxpayers' refund claim. The Department in its denial letter, dated March 14, 2018, explained in part, that Taxpayers' refund claim for 2013 was not timely pursuant to IC § 6-8.1-9-1(a). The letter, in relevant part, states:

[IC §] 6-8.1-9-1(a) required that a claim for refund of excess . . . estimated payments must be filed within a [three (3)] year period in order to be refunded excess . . . estimated payments. This [three (3)] year period generally **begins on the due date of the return that should have been filed** for the period in question. Your claim requesting the refund was not received before the [three (3)] year period had expired. Therefore, your claim for refund in the amount of \$1,579.00 has been denied. **(Emphasis added).**

Taxpayers disagreed, claiming that the Department erroneously denied their refund claim. Taxpayers asserted that they were entitled to the refund for various reasons, as follows:

We did not learn of there being ANY issue with [our] 2013 return until mid February, 2018, when we spoke to your representative while trying to clear up a separate tax issue from another year. At that time, your representative, told us over the phone, that the state had been holding over \$8,000 since 2013 because they never received an actual tax return We contacted our accountant who handles all filing of the returns only to be told that they were supposed to have been sent after a failed e-filing in 2013. We have no record of this

Taxpayers referenced IC § 6-8.1-9-1(j)(2), arguing:

Since it could not have been determined until the 2013 return was actually filed that we had made an overpayment, under the Code as cited, we have 180 days from the discovery that we had made the overpayment. The tolling period should then start in February 2018.

Upon review, however, Taxpayers' reliance on the above-mentioned statutory provision is misplaced. Specifically, IC § 6-8.1-9-1(j) provides:

If a taxpayer's **federal taxable income, federal adjusted gross income, or 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 of the modification by the Internal Revenue Service** as provided under:
 - (A) [IC 6-3-4-6\(c\)](#) and [IC 6-3-4-6\(d\)](#) (for the adjusted gross income tax); or
 - (B) [IC 6-5.5-6-6\(c\)](#) and [IC 6-5.5-6-6\(d\)](#) (for the financial institutions tax).

(Emphasis added).

Accordingly, to claim the refund under IC § 6-8.1-9-1(j), Taxpayers must first have a federal modification on their income tax filing which is attributable to Taxpayers' "federal taxable income, federal adjusted gross income, or federal income tax liability for a taxable year [which] is modified by the Internal Revenue Service." Taxpayers erred in believing that they "have 180 days from the discovery that [they] had made the overpayment" because "discovery of an overpayment" is not the legal requirement or triggering event outlined in the statute to timely claim a refund. Under IC § 6-8.1-9-1(j)(2), the triggering event is a modification made by the IRS.

Second, the Department does not agree that Taxpayers' 2013 "federal taxable income, federal adjusted gross income, or federal income tax liability . . . is modified by the Internal Revenue Service." Specifically, Taxpayers in this instance did not have the federal modification because they did not provide any federal RAR report, including IRS Form 4549-A (Income Tax Discrepancy Adjustments), Form 4549-B (Income Tax Examination Changes), or Form 870-AD (Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency), concerning the 2013 year, to substantiate their claim in question pursuant to IC § 6-8.1-9-1(j)(2). In particular, Taxpayers here did not file their original Indiana income tax return (Form IT-40) and also did not file a Form IT-40X to amend their Indiana filing based on an IRS modification. Thus, IC § 6-8.1-9-1(j) does not apply.

As mentioned earlier, for Indiana income tax purposes, to obtain the refund, IC § 6-8.1-9-1(a) requires that a taxpayer "must file the claim with the department within three (3) years after the [later] of . . . (1) [t]he due date of the return [or] (2) [t]he date of payment." Taxpayers in this case made their estimated payments in 2013 and their 2013 income tax return was due on or before April 15, 2014. Thus, the later of the due date for claiming refund for 2013 is three (3) years from April 15, 2014. In other words, Taxpayers were required to file their return to claim the refund of their 2013 overpayment on or before April 15, 2017. Taxpayers did not file their return on or before April 15, 2017. On March 2, 2018, Taxpayers filed their original IT-40 for the 2013 year claiming they have overpaid the tax. Taxpayers' refund claim thus was untimely.

FINDING

Taxpayers' protest is respectfully denied.

July 10, 2018

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