

**Supplemental Order Denying Refund: 01-20181405R
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 Supplemental 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 agreement allowing Individuals to carry forward previously disallowed losses.

ISSUE

I. Individual Income Tax - Timeliness of Amended Indiana 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) (*Effective July 1, 2012 to June 30, 2015*); IC § 6-8.1-9-1(f)(2); IC § 6-8.1-9-1(j); Final Order Denying Refund 01-20180709R (April 17, 2018).

Taxpayers disagreed with the Department's decision denying a refund of individual income tax arguing that their amended 2010, 2011, and 2012 individual income tax returns were timely filed.

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 Service ("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. an assessment of 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 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 Taxpayer, 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. A Final Order Denying Refund was issued Taxpayer in April 2018 denying the protest on the ground that

the refund request was untimely.

Taxpayers disagreed with the administrative decision and requested a rehearing. The rehearing was granted, a second administrative hearing was conducted, and this Supplemental Final Order Denying Refund results.

I. Individual Income Tax - Timeliness of Amended Indiana Returns.

DISCUSSION

The issue remains the same in this supplemental decision. Did Taxpayers timely request a refund of Indiana income tax on the date Taxpayers filed amended 2010, 2011, and 2012 Indiana income tax returns?

Taxpayers argue that the refund was timely pursuant to IC § 6-8.1-9-1(j) (effective July 1, 2015) which provides as follows:

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).

Taxpayers also cite to IC § 6-3-4-6(c)(1) (effective July 1, 2015) which states:

- For purposes of subsection (b), a modification occurs on the date on which a:
- (1) taxpayer files an amended federal income tax return[.]

Taxpayers conclude that the "trigger date" from which their obligation to notify the Department of the refunds began to run, was the date on which the IRS accepted their corresponding amended federal returns. As explained by Taxpayers:

Because the amended Indiana returns were filed at the same time (September of 2017) as the amended federal returns there is no question that the days' threshold was met whether the 120 or 180 day threshold applies. We believe the Indiana refunds for 2010-2012 are timely and should be processed accordingly.

In other words, the "trigger date" was the same date on which the IRS accepted the amended federal returns; i.e. by definition, the Department received both "notice" and the refund request on the same date the federal adjustment took place.

In the original administrative decision, Final Order Denying Refund 01-20180709R (April 17, 2018), the Department found that the refund was untimely pursuant to IC § 6-8.1-9-1(f) (*Effective July 1, 2012 to June 30, 2015*) on the ground that IC § 6-8.1-9-1(f) was the statute in effect at the time the federal adjustment occurred.

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. In its original administrative decision, the Department found that the issue fell within the rule found at IC § 6-8.1-9-1(f)(2); Under that rule, 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?

The April 2018 decision also cited to, IC § 6-3-4-6 (*Effective January 1, 2011 to June 30, 2015*) which 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.

As explained in the April decision, 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 a 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 Department is unable to agree that Taxpayers' obligation to provide notice and file the refund claim began to run the date Taxpayers filed the federal amended returns because that was not the action which triggered Taxpayers' right to claim the refunds. Instead, 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, 2016, 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 final 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.

July 31, 2018

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