

**Final Order Denying Refund: 04-20181548R; 04-20181549R
Gross Retail Tax
For the Years 2013 and 2014**

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HOLDING

Indiana Farmer was barred by the three-year statute of limitations from obtaining a refund of sales tax paid on the purchase of electricity consumed in the exempt production of feed and grain products; the statute bound the Department from granting an Indiana Farmer from receiving the refund.

ISSUE

I. Gross Retail Tax - Timeliness of Refund Claims.

Authority: IC § 6-2.5-5-5.1; IC § 6-8.1-5-2(a); IC § 6-8.1-9-1.

Taxpayer argues he is entitled to a refund of sales tax paid on the purchase of utilities consumed in the exempt production of agricultural products.

STATEMENT OF FACTS

Taxpayer operates an Indiana farm which he describes as a "swine beef operation." Taxpayer submitted two GA-110L claims for refund requesting the return of sales tax paid on the purchase of electric utilities. (Taxpayer filed separate claims for two different electric meters.) The Indiana Department of Revenue ("Department") granted that portion of the claims filed for the year 2015 but denied claims filed for sales tax paid the utility company during 2013 and 2014. In a letter dated March 2018, the Department stated that "[t]he claim for refund for 2013 [and] 2014 was not filed within the time period required by law."

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

I. Gross Retail Tax - Timeliness of Refund Claims.

DISCUSSION

Taxpayer argues that he is entitled to a refund of sales tax paid on the purchase of utilities consumed in his agricultural business. Taxpayer explains that the electricity is used to operate his feed and grain drying equipment. Taxpayer admits that he was "lax in getting the extra information that was required" but that the Department was equally lax in processing his original ST-200 ("Application for Utility Sales Tax Exemption") and then providing him the form ST-109 ("Indiana Utility/Communication Sales Tax Exemption Certificate") required by the local utility provider.

Taxpayer's claims are based on the statutory exemption found at IC § 6-2.5-5-5.1 which exempts "electrical energy" consumed in the direct production of "tangible personal property" by persons engaged in the business of "agriculture."

However, the issue is not whether or not the utility purchases were or were not exempt; the issue is whether Taxpayer's initial refund requests were or were not timely. Taxpayer's refund requests were each dated January 10, 2018.

IC § 6-8.1-9-1 states in relevant part:

(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 (f) and (g) 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.

Taxpayer's refund claims were submitted January 2018. Under IC § 6-8.1-9-1, the Department correctly determined that the 2015 utility purchases were exempt and timely. As a result, the Department issued the requested 2015 refund. However, the Department also correctly determined that the 2013 and 2014 refund requests were untimely because the three-year statute of limitations had run for these earlier claims.

Taxpayer states that it was - in part - the Department's delay in issuing the requested exemption certificates. Taxpayer is, of course, entitled to timely service by the Department. However, there is no evidence that the delay in submitting the 2013 and 2014 refund requests was attributable to the Department's actions.

Taxpayer also states that the three-year statute of limitations is one-sided and that the Department has a limitless amount of time in which to assess taxes. Not quite; IC § 6-8.1-5-2(a) provides as follows:

Except as otherwise provided in this section, *the department may not issue a proposed assessment under section 1 of this chapter more than three (3) years* after the latest of the date the return is filed, or either of the following:

(1) The due date of the return.

(2) In the case of 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, the end of the calendar year which contains the taxable period for which the return is filed.

(Emphasis added).

In other words, both Taxpayer and the Department are constrained by the time limit to file refund claims and the time limit to issue proposed assessments unless - of course - a taxpayer has failed to file a particular tax return. In this case, the time limit applies to and bars Taxpayer's 2013 and 2014 refund claims.

FINDING

Taxpayer's protest is respectfully denied.

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