

DEPARTMENT OF STATE REVENUE

01-20181213R.ODR

**Final Order Denying Refund: 01-20181213
Individual Income Tax
For Tax Years 2015**

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 is provided for the convenience of the reader and is not part of the analysis contained in this document.

HOLDING

Indiana law does not allow the carryback of net operating losses after December 31, 2011. Individual's protest was thus denied.

ISSUE

I. Income Tax—Net Operating Loss Carryback.

Authority: *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); IC § 6-3-2-2.6.

Taxpayer protests the denial of a refund claim.

STATEMENT OF FACTS

Taxpayer is an individual that filed an IT-40X return for the tax year 2015. On that return Taxpayer carried back net operating losses ("NOL") from the tax year 2016. The Indiana Department of Revenue ("Department") denied Taxpayer's refund claim. An administrative telephone hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Income Tax—Net Operating Loss Carryback.

DISCUSSION

At the outset 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, as well as the preceding audit, shall be entitled to deference.

In his protest letter, Taxpayer states in pertinent part:

I am protesting the refund denial of the NOL carryback from tax year 2016 to tax year 2015. The denial appears to have been based on Schedule 1—Indiana add-backs not being included with the original form IT-40X.

Enclosed you will find a copy of the IT-40X, copy of the Schedule 1—as originally filed with the 2015 return and a copy of the amended Schedule 1 with the NOL factored into the return.

The Department's denial letter, dated February 13, 2018, does state that "your claim for a refund" was being denied for failing "to include your schedule 1 IN Add-backs." However, this letter is mistaken as to the reason why Taxpayer's protest must be denied. It is not a matter of not including the requisite paperwork—it is because Indiana no longer allows NOL carrybacks. Pursuant to IC § 6-3-2-2.6:

(b) Corporations and nonresident persons are entitled to a net operating loss deduction. The amount of the deduction taken in a taxable year may not exceed the taxpayer's unused Indiana net operating losses carried over to that year. A taxpayer is not entitled to carryback any net operating losses after December 31, 2011.

Indiana's law regarding NOL carrybacks changed and "after December 31, 2011" a "taxpayer is not entitled to carryback any net operating losses[.]" Thus Taxpayer's attempt to carryback a 2016 NOL to 2015 is not allowed

FINDING

Taxpayer's protest is denied.

September 27, 2018

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