

DEPARTMENT OF STATE REVENUE

02-20181343R.MOD

**Memorandum of Decision: 02-20181343R
Corporate Income Tax
For Tax Year 2011**

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 document.

HOLDING

Company is entitled to refund for tax year 2011 for throwback sales only. Company was sustained on the throwback sales tax issue pursuant to Letter of Findings 02-20181344.

ISSUE

I. Corporate Income Tax - Refund Statute of Limitations.

Authority: IC § 6-8.1-5-2; IC § 6-8.1-9-1.

Taxpayer argues that it was within the statute of limitations to receive a refund.

STATEMENT OF FACTS

Taxpayer is an Indiana company doing business in Indiana and outside of Indiana. Taxpayer, based on its nexus with Indiana, elected to file its Indiana corporate income tax returns separately, reporting its Indiana income tax for the years ending September 30, 2010, September 30, 2011, and September 30, 2012. Taxpayer filed an amended return for 2011 tax year on October 12, 2015. The Department determined that Taxpayer's refund was denied because it owed tax on the throwback sales issue and that the statute of limitations was only open for purposes of denying or offsetting the refund that was requested.

Taxpayer disagreed and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer explained the basis for the protest. This Memorandum of Decision results.

I. Corporate Income Tax - Refund Statute of Limitations.

DISCUSSION

Taxpayer protests the Department's refund denial. The Department conducted an audit for tax years 2011-2015. The audit resulted in an assessment for 2012-2015 and a refund denial for 2011. The audit report states that:

The above adjustments and the accompanying work papers which have been included in this report provide the actual tax liability for this taxpayer for CY 2011. However, the statute of limitations for CY 2011 is not open for assessment purposes. The statute is ONLY open for purposes of denying (or offsetting) the refund that was requested by the taxpayer in the 2011 amended corporate income tax return. This refund has been denied in its entirety. Therefore, the taxpayer will not be receiving a refund for CY 2011. In addition, the taxpayer will not be assessed for the additional income tax due, per this investigation report.

Taxpayer filed its 2011 amended return on October 12, 2015. The amended return was filed to remove throwback sales to Canada and Mexico from the Indiana sales factor numerator, thus creating a refund for 2011. If a taxpayer believes that it has an overpayment it has three years after the later of the due date of the return or date of payment, to request a refund IC § 6-8.1-9-1. In addition, according to IC § 6-8.1-5-2:

(a) 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.

Taxpayer provided its extension for filing its 2011 tax return and evidence that it filed its 2011 amended return on October 12, 2015. In addition, Taxpayer is sustained on the protested substantive issue regarding the 2011 amended return pursuant to Letter of Findings 02-20181344. In that protest Taxpayer did not protest some issues that could affect its refund amount. Thus, Taxpayer has shown that it is within the statute of limitations to request a refund and is entitled to receive a partial refund based on the corresponding Letter of Findings 02-20181344.

FINDING

Taxpayer's protest is sustained.

November 30, 2018

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