

**Final Order Denying Refund: 01-20181543
Individual Income Tax
For The Tax Years 2016-17**

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 Final Order Denying Refund.

HOLDING

Individual did not qualify for the active duty military deduction. Therefore, the Department's denial of refund was correct.

ISSUE

I. Individual Income Tax–Refund.

Authority: IC § 6-3-1-3.5; IC § 6-3-1-34; IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); Income Tax Information Bulletin 27 (November 2018) 20180829 Ind. Reg. 045180353NRA; Joint Publication 4-05.

Taxpayer protests the denial of a claimed refund of income tax.

STATEMENT OF FACTS

Taxpayer is an individual resident of Indiana. In 2018, Taxpayer filed claims for refund of individual income tax paid for the tax years 2016 and 2017. After review of the claims, the Indiana Department of Revenue ("Department") denied the claims for refund. Taxpayer protested the denial and an administrative hearing was held by telephone. This Final Order Denying Refund results. Further facts will be supplied as required.

I. Individual Income Tax–Refund.

Taxpayer protests the denial of his claim for refund of individual income tax paid for the tax years 2016 and 2017. The Department based its denial on the basis that Taxpayer's claim of exempt income was invalid. Specifically, Taxpayer claimed that income he received while serving in the Indiana National Guard qualified for deduction. The Department disagreed and denied the claim for refund.

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 shall be entitled to deference.

IC § 6-8.1-9-1(a) states:

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 latter 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.

Next, IC § 6-3-1-3.5(a)(19) provides:

Subtract an amount equal to the amount of the taxpayer's qualified military income that was not excluded from the taxpayer's gross income for federal income tax purposes under Section 112 of the Internal Revenue Code.

Also, IC § 6-3-1-34 states:

"Qualified military income" means wages that are paid:

(1) to a member of:

- (A) a reserve component of the armed forces of the United States; or
- (B) the National Guard; and

(2) for any of the following applicable periods, or any combination of the following applicable periods, in a calendar year:

(A) The member's full-time service on involuntary orders in:

- (i) a reserve component of the armed forces of the United States; or
- (ii) the National Guard.

(B) The period during which the member is mobilized and deployed for full-time service in:

- (i) a reserve component of the armed forces of the United States; or
- (ii) the National Guard.

(C) The period during which the member's National Guard unit is federalized.

Taxpayer states that he followed the instructions in IT-40 Booklet 2017. Taxpayer therefore claimed the deduction found under IC § 6-3-1-3.5(a)(19) and listed on the IT-40 as Code 621.

The Department refers to Income Tax Information Bulletin 27 (November 2018) 20180829 Ind. Reg. 045180353NRA provides:

"Mobilization" is defined in Joint Publication 4-05, which provides, in pertinent part, "[m]obilization includes assembling and organizing personnel and [material] for active duty military forces, activating the Reserve Component (RC) (including federalizing the National Guard), extending terms of service, surging and mobilizing the industrial base and training bases, and bringing the Armed Forces of the United States to a state of readiness for war or other national emergency." Service members serving on full time orders in an Active Guard and Reserve Program (AGR) are not considered mobilized for purposes of claiming their income as "Qualified Military Income" under [IC 6-3-1-34](#).

While Income Tax Information Bulletin 27 was updated in November of 2018, after the tax years at issue, the information regarding Active Guard and Reserve ("AGR") service and its income tax implications is not a change in the Department's position on this matter. Rather, Income Tax Information Bulletin 27 was updated to address an issue which had not been addressed before, namely the AGR program and its effect on Indiana income taxes. The Department's position set forth in Income Tax Information Bulletin 27 is the same as it was for the tax years at issue.

In the course of the protest process, Taxpayer provided documentation in support of his position. One of those documents is a copy of orders given to Taxpayer stating that he had been ordered to full-time AGR status. As provided by the explanation in Income Tax Information Bulletin 27, and as established by IC § 6-3-1-34 and Joint Publication 4-05, a service member serving on full time status in an AGR status does not meet the requirements to be classified as qualified military income under IC § 6-3-1-3.5(a)(19). Therefore, the Department properly denied Taxpayer's claim for refund for the tax years 2016 and 2017.

FINDING

Taxpayer's protest is denied.

December 27, 2018

Posted: 02/27/2019 by Legislative Services Agency
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