

DEPARTMENT OF STATE REVENUE

01-20182364R.ODR

**Final Order Denying Refund: 01-20182364R
Individual Income Tax
For the Years 2012 and 2013**

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

Current Ohio Resident was barred by the three-year statute of limitations from obtaining a refund of 2012 and 2013 Indiana income tax.

ISSUE

I. Individual Income Tax - Timeliness of Refund Claims.

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

Taxpayer argues he is entitled to a refund of income tax on the ground that the tax was erroneously withheld on his pension fund payments.

STATEMENT OF FACTS

Taxpayer is a former Indiana resident who now has an Ohio mailing address. Taxpayer states that he moved from Indiana to Ohio in 2011 for family reasons. At the time he moved, Taxpayer explains that he attempted to contact his pension provider to inform the provider of his move to Ohio. Taxpayer believed it unnecessary to file 2012 or 2013 Indiana individual income tax returns because of his move to Ohio. Taxpayer subsequently found that his pension provider had continued to withhold Indiana individual income tax on his behalf.

Taxpayer concluded that the provider erred in withholding income tax on his behalf for the years 2012 and 2013. Therefore, Taxpayer submitted 2012 and 2013 IT-40PNR ("Indiana Part-Year of Full-Year Nonresident Individual Income Tax Returns") returns each of which was dated October 10, 2018, each of which sought a refund of \$1,125.

In a letter dated October 2018, the Indiana Department of Revenue ("Department") denied the refund explaining as follows:

Indiana Code 6-8.1-9-1(a) requires that a claim of excess withholding or estimated payments must be filed within 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 refund in the amount of \$1,125.00 has been denied.

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. Individual Income Tax - Timeliness of Refund Claims.

DISCUSSION

The issue is whether Taxpayer's unique personal circumstances permit the Department to issue the \$1,125 refund despite the fact that the refund request was submitted outside Indiana's three year statute of limitations.

Taxpayer explains that during the years at issue he experienced multiple family tragedies which diverted his attention from Indiana tax matters. Taxpayer also explains that he paid Ohio income taxes during these years and that he has - in effect - been "double taxed" on the same stream of retirement income.

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 October 2018. Under IC § 6-8.1-9-1, the Department also correctly determined that the 2012 and 2013 refund requests were untimely because the three-year statute of limitations had run for these earlier claims.

In these circumstances, Indiana law precludes taxpayers from obtaining refunds outside the limitations. However, that three-year statute of limitations is not one-sided. IC § 6-8.1-5-2(a) binds the Department in much the same manner. The statute 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 specific tax return. In this case, the time limit applies to and bars Taxpayer's 2012 and 2013 refund claims.

The Department is not unsympathetic to Taxpayer's family circumstances but Indiana law plainly and strictly precludes the Department from granting Taxpayer's request.

FINDING

Taxpayer's protest is respectfully denied.

December 28, 2018

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