

**Final Order Denying Refund: 01-20190084R
Individual Income Tax
For the Year 2014**

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

Under either the "due date of the return" or "date of payment" benchmark, Virginia Resident was barred by the three-year statute of limitations from obtaining a refund of 2014 Indiana income tax mistakenly withheld on his behalf by his Indiana employer.

ISSUE

I. Individual Income Tax - Timeliness of Refund Claim.

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

Taxpayer argues that he is entitled to a refund of income tax on the ground that the tax was erroneously withheld by his Indiana employer.

STATEMENT OF FACTS

Taxpayer is a current Virginia resident who worked for an Indiana employer. Taxpayer states that the employer withheld Indiana income tax on his behalf during 2014. Taxpayer filed a 2014 Indiana income tax return seeking a refund of approximately \$2,000 in withholding taxes. The return was postmarked September 2018.

In a letter dated November 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 [\$2,000] has been denied.

Taxpayer concluded that the provider erred in withholding income tax on his behalf for the year 2014 asking for reconsideration of the Department's decision. Taxpayer explained that he was a Virginia resident during 2014 and that he paid Virginia income tax that year. Taxpayer further explained that his Indiana employer mistakenly withheld Indiana tax and that the Department's refund denial constituted a hardship.

Taxpayer submitted a protest but asked that a written decision be issued without conducting an administrative hearing. This Final Order Denying Refund results.

I. Individual Income Tax - Timeliness of Refund Claim.

DISCUSSION

The issue is whether Taxpayer's unique personal circumstances permit the Department to issue the \$2,000 refund despite the fact that the refund request was submitted outside Indiana's three year statute of limitations.

Taxpayer explains that he paid both Virginia and Indiana income taxes on the same stream of income and that had expected to use the Indiana refund to offset his Virginia tax obligation.

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 amended return was submitted September 2018. Under IC § 6-8.1-9-1, the Department correctly determined that 2014 refund request was untimely because the three-year statute of limitations had run for this claim.

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 under either the IC § 6-8.1-9-1 "due date of the return" or "date of payment" benchmark, the time limit applies to and bars Taxpayer's 2014 refund claim.

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

FINDING

Taxpayer's protest is respectfully denied.

February 15, 2019

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