

**Memorandum of Decision: 18-20181676R
Financial Institutions Tax
For Tax Year 2006**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Company provided sufficient documentation to show that refund of collection fees is warranted. Company was also required to file combined 2006 returns and is allowed an additional thirty days, from this decision, to file a proper 2006 amended return.

ISSUE

I. Financial Institution Tax - Income.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4.

Taxpayer protests the denial of its claim for refund.

STATEMENT OF FACTS

Taxpayer is a financial institution that filed separately in Indiana for 2006. In 2011 the Indiana Department of Revenue ("the Department") audited Taxpayer for tax year 2006 and determined that it needs to file a combined return with related entities. Taxpayer, in 2016, was audited by the IRS for tax year 2006; Taxpayer subsequently filed Indiana amended returns pursuant to the federal adjustments. Taxpayer however filed its amended return separately and not combined for tax year 2006. The separately filed return stated tax due which was remitted by Taxpayer. The Department reviewed the amended return and determined that further additional tax was due. Taxpayer's account was eventually levied by a third party on behalf of the Department for the additional tax.

Taxpayer submitted a refund claim for the amount levied, including collection fees. Taxpayer's claim was denied because the amended return provided no information that the additional liability was incorrect. Taxpayer protested the refund denial and an administrative hearing was held. This Memorandum of Decision ensues, and further facts will be given as necessary.

I. Financial Institution Tax - Income.

DISCUSSION

Taxpayer protests the Department's refund denial. Taxpayer maintains that the Department received the proper amount of tax due, and that there was just confusion as to which account the money was being remitted. Taxpayer claims it is entitled to the full refund of the amounts levied by the collection agency. The issue is whether the refund denial was proper.

Taxpayer stated that it had paid tax, penalties, and interest in the amount of \$78,957.78 via a levy on their bank account. Taxpayer stated in its protest letter:

The Indiana Department of Revenue conducted an audit of the 2006 FIT return and determined that [Taxpayer] had been included in a unitary combined FIT return under [Parent] and should not file and pay separate Financial Institution Tax. The original tax paid with the 2006 separate return was refunded in the amount of \$51,131 in January of 2011 plus interest. In February 2016 an amended 2006 separate FIT return was filed for [Taxpayer] due to the closure of an IRS audit. The amended return was erroneously filed on a stand-alone basis as the filers were unaware of the previous [Department] audit concluding there was no separate filing requirement. The erroneously filed 2006 amended return showed an adjusted tax of \$62,319,

less the original tax amount of \$51,131 (it was not known at the time that this was previously refunded) resulting in a tax due amount of \$11,188. That amount was paid along with interest of \$4,933, for a tax payment of \$16,121. Since the original tax amount of \$51,131 was previously refunded, [the Department] assessed and ultimately levied that amount plus penalty, interest and fees.

When Taxpayer filed its amended return pursuant to the IRS adjustment the Department sent a letter stating that, "A review of department record reflects the amended returns did not show the changes from a prior Indiana Audit." The Department then determined that Taxpayer had paid the tax owed, \$78,889.41, via payment from the collection agency. Taxpayer claims it should not have filed a separate amended 2006 FIT return and has therefore requested a full refund in the amount of \$78,957.78.

If the Department reasonably believes that a taxpayer has not reported the proper amount of tax due, the Department shall propose an assessment of unpaid tax based on the best information available to the Department. IC § 6-8.1-5-1(b). The amount of the proposed assessment "is considered a tax payment not made by the due date" and is subject to penalties and interest. *Id.* Notice of the proposed assessment shall be sent to the taxpayer stating that it has sixty (60) days in which to pay the assessment or file a written protest. IC § 6-8.1-5-1(b) and (d). If the taxpayer does not pay the proposed assessment or file a written protest in the sixty (60) day period "[t]he department shall demand payment, as provided in [IC 6-8.1-8-2\(a\)](#), of any part of the proposed tax assessment, interest, and penalties" IC § 6-8.1-5-1(j). In these situations, the Department "shall make the demand for payment in the manner provided in [IC 6-8.1-8-2](#)." IC § 6-8.1-5-1(k).

IC § 6-8.1-8-2 provides that the Department must issue a demand notice for payment which grants the taxpayer a ten (10) day period of time in which to "either pay the amount demanded or show reasonable cause for not paying the amount demanded." IC § 6-8.1-8-2(a). If a taxpayer "does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs," and other fees. IC § 6-8.1-8-2(b). When it has issued a tax warrant, the Department may contract with a collection agency to collect delinquent tax plus interest, penalties, collection fees, and other fees and costs. IC § 6-8.1-8-4(a). Additionally, "a collection fee of ten percent (10 percent) of the unpaid tax is added to the total amount due." *Id.* When a tax warrant is filed, "the total amount of the tax warrant becomes a judgment against the person owing the tax." IC § 6-8.1-8-2(e).

In this case, the Department did not send the notices to the proper address. Taxpayer had notified the Department as to the proper address prior to the notices being sent. Taxpayer therefore was not properly notified of the assessment or warrants. Thus, since Taxpayer was not properly notified. Taxpayer should not be assessed collection fees.

Regarding Taxpayer's claim for refund of FIT. Taxpayer was previously told by the Department that it was required to file a combined return for 2006. Taxpayer is correct that it did not file the amended 2006 return properly. Taxpayer now has 30 days from the date this MOD is issued to provide a 2006 amended return pursuant to the IRS adjustment and the 2011 Department adjustment. Once the amended return has been filed and verified showing the refund being requested, the remaining refund will be granted. If Taxpayer does not file the proper 2006 amended return within thirty (30) days of this final determination, Taxpayer's claim is denied.

FINDING

Taxpayer's protest of the collection fees is granted. Taxpayer's protest of remaining tax requested is sustained pending them filing a 2006 amended return pursuant to both the IRS and Department's adjustments within thirty (30) days as stated above. Otherwise the refund claim is denied.

March 28, 2019

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