

Memorandum of Decision: 02-20182047R
Financial Institutions Tax
For the Tax Year Ending November 2010

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 Memorandum of Decision.

HOLDING

Credit Card Company timely filed its amended 2010 Financial Institution Tax return because it submitted the return within 180 days of the date the IRS and Credit Card Company agreed to final federal "Revenue Agency Report" adjustments determining that Credit Card Company overpaid its federal tax.

ISSUE

I. Financial Institutions Tax - Timeliness of Amended Indiana Return.

Authority: IC § 6-5.5-6-6 (*Effective July 1, 2015*); [IC 6-8.1-9-1\(j\)\(2\)\(B\)](#).

Taxpayer disagreed with the Department's decision denying a refund of Financial Institutions Tax arguing that the 2010 amended return was timely filed.

STATEMENT OF FACTS

Taxpayer is an out-of-state credit card company which files Indiana Financial Institutions Tax ("FIT") returns.

Taxpayer filed an amended FIT return for the period ending November 2010. The return reflected federal "Revenue Agency Report" ("RAR") adjustments. Based on the amended Indiana FIT return, Taxpayer sought a refund of approximately \$800,000. The Indiana Department of Revenue ("Department") reviewed the amended return but denied the refund. In a letter dated July 2018, the Department explained the reason for its decision.

There was an amended return filed claiming RAR (Revenue Agency Report) changes to the above mentioned tax year(s). Indiana statute allows 180 days of the date of the IRS audit to report adjustments and claim a refund. The date reflected on the federal form 4549A is 1/27/2014 and the postmark of the amended return is 6/6/18 so the refund claimed is out-of-statute.

Taxpayer disagreed with the decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Memorandum of Decision results.

I. Financial Institutions Tax - Timeliness of Amended Indiana Return.

DISCUSSION

The only issue is whether Taxpayer's amended FIT return was timely filed under Indiana law. Either the amended return was timely or it was not. This decision does *not* address any of the substantive issues which may or may not be implicated by that return.

As support for its position that the return was timely filed, Taxpayer explains the sequence of events which led to the filing of the Indiana FIT return dated June 6, 2018.

- January 17, 2014 - Proposed audit adjustments issued by the IRS per form 4549-A, Income Tax Discrepancy Adjustments, and Form 4549-B, Income Tax Examination Changes []. (Those "proposed adjustments" resulted in proposed assessments of additional federal tax on the ground that Taxpayer had underpaid its tax liability).
- February 18, 2014 - Taxpayer filed a protest regarding adjustments included in the Form 4549-A and Form 4549-B.

- April 1, 2014 - Taxpayer's case was sent to the Appeals Office [].
- May 10, 2016 - IRS issues Form 870-AD, Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment.
- May 23, 2017 - Taxpayer agrees and signs Form 870-AD.
- September 21, 2017 - Taxpayer received notification its case was sent to the Joint Committee of Taxation.
- December 8, 2017 - Taxpayer received notification that the Joint Committee on Taxpayer completed its review along with signed federal Form 870-AD [].

Taxpayer concluded that, based on the timeline outlined above, its amended FIT return, dated June 6, 2018, was timely filed. Taxpayer explains as follows:

The [federal] audit became final with the IRS agent signing the Form 870-AD. Under Indiana statute a taxpayer has 180-days from the date [a] final determination concerning a claim for refund or the date of signing of federal [form] 870-AD by an authorized representative of the IRS.

Taxpayer argues that the "notice" issue is governed by current Indiana law. IC § 6-5.5-6-6 (*Effective July 1, 2015*) provides:

(a) Each taxpayer shall notify the department in writing of any alteration or modification of a federal income tax return filed with the United States Internal Revenue Service for a taxable year that begins after December 31, 1988, including any modification or alteration in the amount of tax, regardless of whether the modification or assessment results from an assessment.

(b) The taxpayer shall file the notice in the form required by the department within *one hundred eighty (180) days* after the alteration or modification is made.

(c) For purposes of this section, a modification or alteration occurs on the date on which a:

- (1) taxpayer files an amended federal income tax return;
- (2) final determination is made concerning an assessment of deficiency;
- (3) *final determination is made concerning a claim for refund*;
- (4) taxpayer waives the restrictions on assessment and collection of all, or any part, of an underpayment of federal income tax by *signing a federal Form 870*, or any other Form prescribed by the Internal Revenue Service for that purpose. For purposes of this subdivision:
 - (A) a final determination does not occur with respect to any part of the underpayment that is not covered by the waiver; and
 - (B) if the signature of an authorized representative of the Internal Revenue Service is required to execute a waiver, the date of the final determination is the date of signing by the authorized representative of the Internal Revenue Service;

(5) taxpayer enters into a closing agreement with the Internal Revenue Service concerning the taxpayer's tax liability under Section 7121 of the Internal Revenue Code that is a final determination. The date the taxpayer enters into a closing agreement under this subdivision is the date the closing agreement is signed by an authorized representative of the Internal Revenue Service; or

(6) modification or alteration in an amount of tax is otherwise made that is a final determination; for a taxable year, regardless of whether a modification or alteration results in an underpayment or overpayment of tax.

(d) For purposes of subsection (c)(2) through (c)(6), a final determination means an action or decision by a taxpayer, the Internal Revenue Service (including the Appeals Division), the United States Tax Court, or any other United States federal court concerning any disputed tax issue that:

- (1) is final and conclusive; and
- (2) cannot be reopened or appealed by a taxpayer or the Internal Revenue Service as a matter of law.

(e) If the federal modification or alternation results in a change in the taxpayer's federal adjusted gross income or income within Indiana, the taxpayer shall file an amended Indiana financial institutions tax return (as required by the department) and a copy of the taxpayer's amended federal income tax return with the department not later than the date that is one hundred eighty (180) days after the modification or alteration is made.

(f) The taxpayer shall pay an additional tax or penalty due under this article upon notice or demand from the department. (*Effective July 1, 2015*).

(*Emphasis added*).

Taxpayer maintains that the relevant "trigger date" - the date on which Taxpayer's deadline to notify the Department began to run - is December 8, 2017. December 8, 2017, is the date on which the IRS's representative signed the Form 870-AD effectively waiving the assessment and accepting Taxpayer's claim that it had actually overpaid its federal income tax.

The Department points out that the IRS and Taxpayer agreed in writing on December 8, 2017, that the assessment would be waived and that Taxpayer had overpaid its federal tax. That agreement "triggered" Taxpayer's "notice" requirement under current IC § 6-5.5-6-6 to file an amended return within 180 days. Current IC § 6-5.5-6-6 governs the "notice" requirement because that is the statute in effect the "triggering event" occurred.

[IC 6-8.1-9-1\(j\)\(2\)\(B\)](#) governs the "claim" requirement which states:

- (j) If a taxpayer's federal taxable income, federal adjusted gross income, or federal income tax liability for a taxable year is modified by the Internal Revenue Service, and the modification would result in a reduction of the tax legally due, the due date by which the taxpayer must file a claim for refund with the department is the later of:
- (1) the date determined under subsection (a); or
 - (2) the date that is *one hundred eighty (180) days after the date of the modification by the Internal Revenue Service* as provided under:
 - (A) [IC 6-3-4-6\(c\)](#) and [IC 6-3-4-6\(d\)](#) (for the adjusted gross income tax); or
 - (B) [IC 6-5.5-6-6\(c\)](#) and [IC 6-5.5-6-6\(d\)](#) (for the financial institutions tax).

Therefore, Taxpayer met its 180 day filing deadlines.

FINDING

On the sole question of whether the amended FIT return and refund claim was timely filed, Taxpayer's protest is sustained.

May 28, 2019

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