

**Final Order Denying Refund: 01-20190844R
Individual Income Tax
For the Year 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

Indiana Residents were barred by the three-year statute of limitations from obtaining a refund of both 2012 and 2013 Indiana individual income taxes.

ISSUE

I. Individual Income Tax - Timeliness of Refund Claim.

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

Taxpayers argue that they are entitled to a refund of income tax on the ground they originally overpaid their 2012 and 2013 Indiana income taxes.

STATEMENT OF FACTS

Taxpayers (Husband and Wife) are Indiana residents who are required to file their Indiana income tax returns (Form IT-40) annually on or before the statutory due date, reporting their income. Taxpayers timely filed a 2012 joint Indiana income tax return. At the time they filed the return, they included a \$4,746 check. Taxpayers subsequently stopped payment of the check. The Department issued an assessment of \$5,232 which included the original tax amount along with penalties and interest. In May 2013, Taxpayers paid the \$5,232 assessment.

Taxpayers subsequently filed an amended 2012 return in November 2018, requesting a refund of \$4,380. The Indiana Department of Revenue ("Department") reviewed the amended 2012 return and denied a \$3,407 refund amount. In a letter dated January 2019, the Department explained the reason for denying the refund.

Indiana Code 6-8.1-9-1(a) requires that a claim for refund of excess withholding or estimated payments must be filed within a 3 year period in order to be refunded excess withholding or estimated payment. 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.

In a second instance, Taxpayers failed to file a 2013 Indiana income tax return. The Department issued a proposed assessment based upon the best information available to the Department at the time of the assessment ("BIA assessment"). In the absence of a response to the proposed assessment, the liability proceeded to the warrant stage and was referred to the Department's collection service. The collection service obtained a series of payments for the assessed tax. Taxpayers thereafter submitted a 2013 tax return postmarked December 2018 which was processed by the Department January 2019. Upon review, the Department adjusted Taxpayers' 2013 return disallowing certain losses claimed on the Schedules to their 2013 federal return and a claimed \$521 tax credit of estimated tax. The Department ultimately responded in a letter dated January 2019 denying Taxpayers a then reduced refund of \$462 on the ground that the 2013 refund request was untimely. The Department again cited to IC § 6-8.1-9-1(a) as authority for its position.

Taxpayers disagreed with both Department's decisions denying the refunds and submitted a protest to that effect. An administrative hearing was scheduled to be conducted by telephone which was intended to provide Taxpayers an opportunity to explain the basis for their protest. Taxpayers chose not to take part in the telephone hearing. This Final Order Denying Refund is based upon the information contained within the protest file.

I. Individual Income Tax - Timeliness of Refund Claim.

DISCUSSION

The issue is whether Taxpayers' unique personal circumstances permit the Department to issue the \$4,380 refund and the \$462 refund despite the fact that the refund requests were submitted outside Indiana's three-year statute of limitations.

Taxpayers explained that during the years at issue, they were burdened by health issues and unable to file more timely returns. Taxpayers further stated that the Internal Revenue Service issued them an income tax refund for the year 2012 and questioned why the "Indiana Department of Revenue would deny an amended return when the Federal IRS approved the same Amended return."

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.

Taxpayers' \$4,380 2012 refund claim was submitted November 2018. Under IC § 6-8.1-9-1, the Department also correctly determined that the 2012 refund request was untimely because the three-year statute of limitations had run for this claim.

Taxpayers' 2013 return was submitted December 2018. The Department adjusted the return and reduced the amount which Taxpayers originally requested. Regardless of the amount of Taxpayers' 2013 refund claim, under IC § 6-8.1-9-1, the Department also correctly determined that the 2013 refund request was untimely because the three-year statute of limitations had run for this second claim.

In these circumstances, Indiana law precludes Taxpayers from obtaining refunds outside the three-year limitations period. 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 Taxpayers 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 Taxpayers' 2012 and 2013 refund claims.

The Department is not unsympathetic to Taxpayers' particular circumstances but Indiana law plainly and strictly precludes the Department from granting Taxpayers' requests. Under either the statute's "due date of the return" or the "date of payment" provision, Taxpayers' refund requests were untimely.

Finally, it should be noted that Taxpayers were levied pursuant to a BIA assessment for the tax year 2013. Upon filing the actual return in late 2018, the Department has refunded Taxpayers the overpayment concerning that tax levy based on the BIA assessment, including the \$521 base tax. However, collection fees and costs are not refundable.

FINDING

Taxpayers' protest of both 2012 and 2013 refund denials is respectfully denied.

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