

**Final Order Denying Refund Number: 03-20190937R
Withholding Tax
For The Tax Period 2015**

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

Company's 2015 overpayment was properly offset because it had a 2017 outstanding liability attributable to a 30 percent penalty for its failure to timely address a "Notification of Return Payment."

ISSUE

I. Withholding Tax - Refund Claimed by Employer.

Authority: IC § 6-8.1-9-1; IC § 6-8.1-9-2; IC § 6-8.1-10-5; [45 IAC 15-9-2](#); Commissioner's Directive 13 (October 2015).

Taxpayer protests the refund denial of withholding tax for the tax year 2015.

STATEMENT OF FACTS

Taxpayer, an Indiana company, has employees both in Indiana and outside of Indiana. Taxpayer withholds and remits tax on wages paid to its employees regularly.

In late 2018, and again in early 2019, Taxpayer requested that the Indiana Department of Revenue ("Department") refund approximately \$10,000 of tax it overpaid for the 2015 tax year (Claim Numbers 1892241 and 1955226). Upon review, the Department denied the refund requests in January 2019 and, again in April 2019.

Taxpayer protested. A phone hearing was held. This Final Order Denying Refund results, addressing Taxpayer's protest of both refund denials. Further facts will be provided as necessary.

I. Withholding Tax - Refund Claimed by Employer.

DISCUSSION

Taxpayer asserted that it was entitled to the full refund because it had an overpayment for the tax year 2015 and the Department erroneously denied Taxpayer's approximately \$10,000 claimed refund.

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund, which, in relevant part, provides:

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 . . . [I]n order to obtain the refund, the person must file the claim with the department within three (3) years after the latter 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 . . . 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.

[45 IAC 15-9-2](#) further explains, in relevant part, that:

- (b) The department has no legal method of generating a claim for refund. A claim for refund can only be initiated pursuant to [IC 6-8.1-9-1](#).

. . .

- (d) When filing a claim for refund with the department the taxpayer's claim shall set forth:
- (1) the amount of refund claimed;
 - (2) **a sufficiently detailed explanation of the basis of the claim such that the department may determine its correctness;**
 - (3) **the tax period for which the overpayment is claimed; and**
 - (4) **the year and date the overpayment was made.**

The claim for refund shall be filed on a form prescribed by the department.

(Emphasis added).

Thus, when a taxpayer determines it overpaid taxes, the taxpayer is required to file a refund claim using forms, such as a "Claim for Refund (Form GA-110L), an amended income tax return, or a withholding tax return (Form WH-3)" as prescribed by the Department in order to claim a refund. IC § 6-8.1-9-1(a); [45 IAC 15-9-2](#); Commissioner's Directive 13 (October 2015), 20151125 Ind. Reg. 045150407NRA. The taxpayer also must clearly state "the amount of refund claimed," "[a] detailed explanation of the basis of the claim such that the department may determine its correctness," "the tax period for which the overpayment is claimed," and "the year and date of the overpayment." [45 IAC 15-9-2](#).

Before issuing a refund, IC § 6-8.1-9-2(a) further mandates that the Department first apply the overpayment in a situation such as a taxpayer has an outstanding tax liability:

If the department finds that a person has paid more tax for a taxable year than is legally due, the department **shall apply the amount of the excess against any amount of that same tax that is assessed and is currently due.** The department **may then apply any remaining excess against any of the listed taxes** that have been assessed against the person and that **are currently due.** Subject to subsection (c), if any excess remains after the department has applied the overpayment against the person's tax liabilities, the department shall either refund the amount to the person or, at the person's request, credit the amount to the person's future tax liabilities. **(Emphasis added).**

In this instance, Taxpayer argued that it was entitled to the refund, which was erroneously offset by the Department. The Department, in the January 2019 Letter, explained that the overpayment "was offset to liability 201702821911" ("Liability at Issue") on October 9, 2018. In other words, although Taxpayer had an approximately \$10,000 overpayment, at the same time it also had an outstanding withholding tax liability for 2017. As such, that refund was subsequently offset and applied to the Liability at Issue pursuant to IC § 6-8.1-9-2(a).

Throughout the protest process, Taxpayer asserted that it made sufficient amount of payment for its 2017 withholding account. As such, it was not responsible for the Liability at Issue - a 2017 liability. In other words, although the refund denials were concerning 2015, Taxpayer essentially protested the Liability at Issue, a 2017 liability, which advanced to a warrant collection stage in early October 2018. The issue thus becomes whether Taxpayer was responsible for the Liability at Issue. The Liability at Issue in this case stemmed from a "Return Payment" due to "Payment Stopped" pursuant to IC § 6-8.1-10-5, which states, in part:

(a) If a person makes a tax payment with a check, credit card, debit card, or electronic funds transfer, and **the department is unable to obtain payment on the check, credit card, debit card, or electronic funds transfer for its full face amount when the check, credit card, debit card, or electronic funds transfer is presented for payment through normal banking channels, a penalty of ten percent (10[percent]) of the unpaid tax or the value of the check, credit card, debit card, or electronic funds transfer, whichever is smaller, is imposed.**

(b) When a penalty is imposed under subsection (a), the department **shall notify the person by mail that the check, credit card, debit card, or electronic funds transfer was not honored and that the person has ten (10) days after the date the notice is mailed to pay the tax and the penalty** either in cash, by certified check, or other guaranteed payment. **If the person fails to make the payment within the ten (10) day period, the penalty is increased to thirty percent (30[percent])** multiplied by the value of the check, credit card, debit card, or electronic funds transfer, or the unpaid tax, whichever is smaller.

(Emphasis added).

In this instance, the Department's records showed that, in June 2018, Taxpayer filed an amended withholding

return, which included a check payment of approximately \$30,000 for its 2017 tax year. The Department processed the amended return and the check. However, the Department was unable to obtain the \$30,000 check payment through the regular banking channel because Taxpayer stopped the payment of that \$30,000 check. The Department informed Taxpayer in July 2018 sending Taxpayer a "Notification of Return Payment" through the United States mail. In the July 2018 "Notification of Return Payment," Taxpayer was further informed, as follows:

The penalty amount shall be increased by thirty percent (30[percent]) of the face value of the payment or the unpaid tax, whichever is smaller, if not paid by July 27, 2018 . . . (Emphasis added).

Taxpayer did not respond to the "Notification of Return Payment" before July 27, 2018. On August 10, 2018, the Department followed up with Taxpayer by mailing a "Demand Notice for Payment." Taxpayer also did not respond to the Department's "Demand Notice for Payment" before the due date. Both notices were sent to Taxpayer's mailing address listed within the Department's records and the Department has fulfilled its statutory obligation. Eventually, in September 2018, the Liability at Issue advanced to the warrant collection stage. On October 29, 2018, Taxpayer contacted the Department concerning the Liability at Issue, asserting that it made sufficient payment to the Department in January 2018 for its 2017 withholding account and the Department did not properly apply its January 2018 payment. In addition to its protest letter, Taxpayer offered its correspondence among its payroll tax agents and the Department.

Upon review, however, the Department is not able to agree that Taxpayer was not responsible for the Liability at Issue. In particular, Taxpayer here stopped the payment when the check was presented. The Department was not able to obtain payment in question through the regular banking channel. The Department promptly notified Taxpayer that the check payment was dishonored, requesting Taxpayer's prompt action by July 27, 2018. Taxpayer failed to do so. The Liability at Issue was a thirty (30) percent penalty imposed under IC § 6-8.1-10-5(b) because Taxpayer failed to timely address the "Return Payment" issue. That is, Taxpayer here was given additional time - ten (10) days - by July 27, 2018 to address the "Return Payment" issue but Taxpayer did not do so. Not until October 29, 2018, did Taxpayer contact the Department. Had Taxpayer contacted the Department in July then, the Department could have worked with Taxpayer. In turn, Taxpayer's January 2018 payment would have been applied to its liability stated in Taxpayer's amended return without further collections. Therefore, Taxpayer's assertions that (1) Taxpayer had sufficient funds in its 2017 withholding account and (2) its January 2018 payment was not properly applied are beyond the scope of this protest.

In short, given the totality of the circumstances, *in the absence of other verifiable supporting documents*, Taxpayer was not entitled to the refund and its 2015 refund was properly denied because the Liability at Issue was for Taxpayer's failure to *timely* address the "Return Payment" issue. Since Taxpayer failed to timely address the issue that its payment was dishonored on or before July 27, 2018, Taxpayer's reliance of its January 2018 payment is misplaced.

FINDING

Taxpayer's protest is respectfully denied.

October 28, 2019

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