

**Final Order Denying Refund: 03-20191071R
Withholding Tax
For the Tax Period December 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 claim for a refund of 2015 withholding tax is barred by the three-year statute of limitations.

ISSUE

I. Individual Income Tax - Timeliness of Refund Claim.

Authority: IC § 6-3-4-8; IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the Department's refund denial.

STATEMENT OF FACTS

Taxpayer is an Indiana company that remits withholding tax. In 2019, Taxpayer filed a Form GA-110L claiming that it had overpaid withholding tax in December 2015 and for multiple months in 2018. The Indiana Department of Revenue ("Department") granted Taxpayer's refund claim for 2018, but denied the claim for 2015. Taxpayer protested the partial refund denial, opting for the Department to make its written decision based on the materials sent in with the protest. Therefore, no administrative hearing was held. This Order is written based on the materials in the protest file. Further facts will be supplied as necessary.

I. Individual Income Tax - Timeliness of Refund Claim.

FINDING

Taxpayer protests the denial of its claim for refund of Indiana withholding tax for December 2015. The Department denied this claim because it was filed after the three-year statute of limitations. Taxpayer claims that the overpayment in 2015 was the result of the Department failing to inform Taxpayer that a payment plan arrangement had been fulfilled, meaning Taxpayer mistakenly continued making payments and overpaid tax. Taxpayer claims that it would have requested the refund earlier had it known that the payment plan was completed.

As an initial matter, the Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the initial refund determination, shall be entitled to deference.

IC § 6-8.1-9-1(a) provides the statute of limitation for a refund claim:

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, 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.

(Emphasis added.)

Therefore, if a person has paid more tax than he or she believes was properly due, the person may claim a refund of the excess payment. In this case, Taxpayer claimed a refund of its December 2015 withholding tax. IC § 6-3-4-8(e) explains that withholding tax returns are due concurrently with payment of the tax. IC § 6-3-4-8(b) explains when that payment is due:

An employer shall pay taxes withheld under subsection (a) during a particular month to the department no later than thirty (30) days after the end of that month. However, in place of monthly reporting periods, the department may permit an employer to report and pay the tax for a calendar year reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed one thousand dollars (\$1,000). An employer using a reporting period (other than a monthly reporting period) must file the employer's return and pay the tax for a reporting period no later than the last day of the month immediately following the close of the reporting period.

(Emphasis added.)

Taxpayer's December 2015 withholding return was due on January 30, 2016, the same day that payment was due. Therefore, by statute, the last day Taxpayer could request a refund was January 30, 2019. Because Taxpayer did not file its GA-110L until February 2019, its refund request is untimely. The statute does not provide exceptions to this timeliness requirement for a taxpayer who did not receive notice of the completion of a payment plan. Even if such exceptions existed, Taxpayer would not qualify for them. The Department's records show payment plans with Taxpayer for other months of withholding tax liability, but none in place for the liability from December 2015. Therefore, based on IC § 6-8.1-9-1 Taxpayer's protest is denied.

FINDING

Taxpayer's protest is denied.

December 6, 2019

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