

**Supplemental Final Order Denying Refund: 03-20191558
Withholding Tax
For The Tax Year 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 Supplemental Order Denying Refund.

HOLDING

Corporation did not file a claim for refund within the three year statute of limitations, therefore its 2013 claim for refund in Indiana tax was denied.

ISSUE

I. Withholding Tax - Statute of Limitations.

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

Taxpayer protests the denial of its refund claim.

STATEMENT OF FACTS

Taxpayer is an Indiana Corporation. Taxpayer filed a claim for refund of withholding tax it had remitted for an employee for 2013. The Indiana Department of Revenue ("Department") denied Taxpayer's claim for refund because it filed the claim beyond the statutory three year period required to file a refund claim. Taxpayer protested the denial and the Department scheduled an administrative hearing. However, Taxpayer did not attend the originally scheduled hearing. The Department granted a requested rehearing which notified the Taxpayer that this was its last attempt to complete the administrative process. Taxpayer attended that rehearing and this Final Supplemental Order Denying Refund results. Additional facts will be provided as necessary.

I. Withholding Tax - Statute of Limitations.

DISCUSSION

Taxpayer withheld tax from its employee ("Employee") in 2013. Employee lived in Arizona during 2013 but traveled to Indiana for work for eight weeks out of the year. Employee filed her 2013 Indiana Tax Return in August of 2014. In 2017, Arizona's Department of Revenue told Employee that she needed to file her 2013 Tax Return in Arizona, because she had an Arizona driver's license. On July 24, 2017, Employee filed a refund claim with Indiana for 2013 Indiana withholding tax. The Department denied Employee's claim for refund on October 3, 2017 stating, "Taxpayer needs to have the company they work for file an amended WH-3 return for period ending 12/31/2013." On October 11, 2017, Taxpayer refunded Employee the Indiana withholding tax. On October 27, 2017, Taxpayer filed an amended 2013 WH-3 with Indiana claiming a refund of withholding tax, seeking the amount of withholding it refunded to Employee. The Department denied the claim because it was outside of the Statute of Limitations.

"[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 shall be entitled to deference.

The Indiana Code provides guidance on filing a refund claim. IC § 6-8.1-9-1(a) 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. 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 latter of the following:

(1) The due date of the return.

(2) The date of payment....

Taxpayer claims the statute of limitations began to toll when it refunded its employee the withholding tax. This is not the correct date to determine the dates of the statute of limitations. IC § 6-8.1-9-1(a) requires the time to begin tolling on the latter of the due date of the return or date of payment. In this case, the return and payment at issue is Taxpayer's return on payments to the Department. Taxpayer remitted withholding tax and filed the original WH-3 on January 30, 2014. The due date for filing was January 31, 2014. The due date to request a refund was January 31, 2017. Taxpayer filed its amended WH-3 on October 27, 2017, which was past the three year limit provided in IC § 6-8.1-9-1(a). Thus, the statute of limitations expired as provided under IC § 6-8.1-9-1(a) and is therefore not entitled to a refund.

FINDING

Taxpayer's protest is denied.

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