

DEPARTMENT OF STATE REVENUE

01-20191444R.ODR

**Final Order Denying Refund: 01-20191444R
Individual Income Tax
For the Year 2012**

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

Individual did not provide sufficient documentation to show the Department improperly levied her bank account, therefore, Individual's refund claim was properly denied.

ISSUE

I. Individual Income Tax - Timeliness of Refund Claim.

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

Taxpayer protests the Department's refund denial.

STATEMENT OF FACTS

Taxpayer is an individual residing in Indiana. Taxpayer was notified by the Indiana Department of Revenue ("Department") that her husband failed to file a 2012 Indiana individual tax return and had been assessed income tax based on the "best information available" to the Department. The assessment staged to warrant and eventually Taxpayer's bank account was levied for the tax assessed, penalty, interest, and collection fees. Taxpayer requested a refund of the amount levied from her bank account, but the Department denied the refund because the claim was three years outside the statute of limitations.

Taxpayer disagreed with the Department's refund denial and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer explained the basis for the protest. This Final Order Denying Refund results.

I. Individual Income Tax - Timeliness of Refund Claim.

FINDING

Taxpayer argues that she is entitled to a refund of tax, penalty, interest, and collection fees. The issue raised by Taxpayer is addressed at IC § 6-8.1-9-1(a) which states in relevant part:

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 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.

In this instance, Taxpayer explained in her protest that her husband had requested a mortgage modification in 2012 which resulted in a 1099C or "cancelation of debt." Husband then died January 2013, before his income tax return was due. Taxpayer explained that she and her husband had been filing their taxes separately for several years prior to 2012. When her husband failed to have his 2012 return filed, the Department created an assessment based on the 1099C and best information available. On July 20, 2016, Taxpayer's bank account was levied by the Department, but Taxpayer stated her husband's name was never associated with that bank account.

Taxpayer went on to state that her name was also never on the mortgage or mortgage modification. Taxpayer therefore concludes that her Husband's tax assessment should not have been levied from her bank account. Based on her reasoning, Taxpayer filed a refund claim on July 24, 2019 for the amount levied from her bank account.

Pursuant to IC § 6-8.1-9-1(a)(1) a refund maybe considered by the Department as long as the refund claim is made within three years of payment or due date of the return, whichever is later. The tax was "paid" on July 20, 2016 when Taxpayer's bank account was levied, thus the time to request a refund under IC § 6-8.1-9-1(a)(2) ended July 20, 2019. Taxpayer's claim is untimely. In addition, Taxpayer has not provided sufficient documentation to show that she was never attached to the mortgage, her husband was not associated with the bank account that was levied, or that she never received proper notice. Based on the information, Taxpayer's protest is denied.

FINDING

Taxpayer's protest is respectfully denied.

March 11, 2020

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