

**Final Order Denying Refund: 04-20200086R
Withholding Tax
For the Tax Year 2018**

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 is not entitled to a refund of collection fees.

ISSUE

I. Sales Tax - Collection Fees.

Authority: IC § 6-8.1-9-1; IC § 6-8.1-8-4; *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 was an Indiana business that closed in 2017. After Taxpayer went out of business, the Indiana Department of Revenue ("Department") determined that Taxpayer owed unremitted sales tax. The Department therefore issued a proposed assessment for sales tax, penalty, and interest. Taxpayer did not respond to the proposed assessment and the Department issued a demand notice for the unremitted sales tax, penalty, and interest. Taxpayer did not respond to the demand notice and the liability advanced to the warrant stage. At that point, the Department employed a collection agency to collect the unpaid liability. After the collection agency contacted Taxpayer's bank, Taxpayer attempted to pay the liability. That payment was rejected due to insufficient funds. The collection agency then levied Taxpayer's bank account for the unpaid liability plus collection fees. Taxpayer filed a claim for refund of the amount levied from its bank account. After review, the Department refunded the amount for sales tax, penalty, and interest, but did not refund the amount related to collection fees. Taxpayer protested the denial of the refund of collection fees. An administrative hearing was held and this Final Order Denying Refund results. Further facts will be supplied as required.

I. Sales Tax - Collection Fees.

DISCUSSION

Taxpayer closed its business in November 2017. After the collection agency employed by the Department levied Taxpayer's bank account, Taxpayer filed a claim for refund of the entire amount which had been levied. After review of Taxpayer's claim for refund, the Department refunded the amounts related to sales tax, penalty, and interest. The Department denied refund of collection fees. Taxpayer protests that collection fees should be refunded as well.

"[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 [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. . .

IC § 6-8.1-8-4 provides:

(a) When the department collects a judgment arising from a tax warrant, it may proceed in the same manner that any debt due the state is collected, except as provided in this chapter. The department may employ special counsel or contract with a collection agency for the collection of a delinquent tax plus interest, penalties, collection fees, sheriff's costs, clerk's costs, and reasonable fees established under subsection (b) if:

- (1) an unsatisfied warrant has been issued by the department; or
- (2) the department received a tax payment by check or other instrument drawn upon a financial institution, and the check or other instrument was not honored by that institution.

(b) The commissioner and the budget agency shall set the fee that the special counsel or collection agency will receive and payment of the fee shall be made after a claim for that fee has been approved by the department.

(c) The fees become due and owing by the taxpayer upon the filing of an amended warrant with the circuit court clerk adding the fee authorized by subsection (b) to the amount of the judgment lien under section 2 of this chapter.

Taxpayer timely filed a claim for refund for tax, penalty, interest, and collection fees based on the amount levied from its bank account and on the fact that the Department agreed that it did not owe the sales tax which the Department originally believed was unpaid. Taxpayer did not timely respond the Department's assessment. Thus, under IC § 6-8.1-8-4, the Department is authorized to employ a collection agency to collect a debt arising from a tax warrant. After Taxpayer's account was levied, Taxpayer filed a claim for refund for the tax, penalty, interest, and collection fee. Taxpayer did not contact the Department in a timely manner to halt the collection agency. The collection agency carried out its duties and is entitled to its collection fees, as provided by IC § 6-8.1-8-4. Thus, Taxpayer will not receive a refund on collection fees.

FINDING

Taxpayer is denied.

April 28, 2020

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