

DEPARTMENT OF STATE REVENUE

01-20200291R.ODR

**Final Order Denying Refund: 01-20200291R
Penalty and Collection Costs
For 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 Final Order Denying Refund.

HOLDING

Indiana residents failed to demonstrate that they were entitled to refund of interest, penalties, and collection costs.

ISSUE

I. Tax Administration - Interest, Penalties and Collection Costs.

Authority: IC § 6-3-4-4.1; IC § 6-8.1-5-1; IC § 6-8.1-5-2; IC § 6-8.1-8-2; IC § 6-8.1-8-4; IC § 6-8.1-8-8; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Ind. Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Wendt LLP v. Ind. Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Ind. Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Letter of Findings 01-20190152 (May 28, 2019).

Taxpayers claim that they are entitled to the refund of interest, penalties, and collection costs.

STATEMENT OF FACTS

Taxpayers are individuals with a current Florida mailing address. In 2018, Taxpayers' bank account was levied by a collection agency on behalf of the Indiana Department of Revenue ("Department"). Immediately after the tax levy, Taxpayers protested the underlying assessment, which was based on the best information available at that time ("BIA assessment"). The Department held a hearing in 2019 and issued a final determination, Letter of Findings Number 01-20190152 (May 28, 2019) ("LOF"), 20190731 Ind. Reg. 045190349NRA, denying Taxpayers' protest. Taxpayers did not appeal the final determination.

Subsequently, in January 2020, Taxpayers filed their original Indiana income tax return for 2013, requesting a refund. The Department processed that return and granted a refund to Taxpayers. Taxpayers protested the amount refunded, claiming that they were entitled to an additional refund, which included penalties and collection costs. Taxpayers further asked that the Department make the final determination without a hearing. This Final Order Denying Refund ensues based on the supporting documents submitted and information available within the file.

I. Tax Administration - Interest, Penalties and Collection Costs.

DISCUSSION

After the Department issued the LOF, Taxpayers filed their 2013 return asking for a refund in 2020. The Department reviewed that return and issued a refund which excluded the interest, penalties, and collection costs.

Taxpayers disagreed, arguing that they were entitled to an additional refund including the interest, penalties, and collection costs because the Department's refund decision in 2020 supported their position that the Department's initial BIA assessment was wrong. Thus, the issue in this case is whether Taxpayers demonstrated that they were entitled to additional refund.

In this instance, Taxpayers' protest referenced the Department's initial BIA assessment for 2013. Thus, as a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; Taxpayers bear the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, Taxpayers are required to provide documentation explaining and supporting their challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*,

939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Additionally, IC § 6-8.1-5-1(b) states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

IC § 6-8.1-5-1(d) outlines the taxpayer's right to protest and request a hearing within a statutory due date. IC § 6-8.1-5-1(j) and (k) further detail that the department shall demand payment after certain statutory requirements are met. See also IC § 6-8.1-8-2.

For tax year 2013, IC § 6-8.1-5-2(f) provides:

If a person files a fraudulent, unsigned, or substantially blank return, or if a person **does not file a return**, there is no time limit within which the department must issue its proposed assessment. **(Emphasis added).**

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.

IC § 6-8.1-8-8(1) further permits the Department to "levy upon the property of the taxpayer held by a financial institution" which does business within the State of Indiana.

Moreover, IC § 6-8.1-10-1(a) states, "If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, . . . the person is subject to interest on the nonpayment."

IC § 6-8.1-10-2.1(d) provides the following:

If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

In this instance, the Department's records showed that immediately after the tax levy in 2018, Taxpayers protested the BIA assessment and were afforded a hearing to address their grievances. Taxpayers chose not to protest penalties and collection costs. Rather, Taxpayers only protested the issue of residency. The Department is mindful that there is no one set of standards that will accurately indicate the person's intent in every relocation. Upon review, the LOF further explains the following:

Given the totality of the circumstances, the Department is unable to agree that Taxpayers have met their

burden of establishing they were not Indiana residents during 2013. In this case, Taxpayers have failed to distinguish between "residency" and "location." Although Taxpayers may well have been living in China during 2013, the evidence does not establish that they originally moved to China with the "intent of abiding permanently without Indiana." [45 IAC 3.1-1-23](#). As explained in [45 IAC 3.1-1-22](#), "Once a person is domiciled in Indiana, that status is retained until such time as he or she voluntarily takes positive action to become domiciled in another state or country and abandons the Indiana domicile"

Taxpayers did not request a rehearing and did not appeal the LOF. IC § 6-8.1-5-1(g). As such, the issues concerning the 2013 BIA assessment including penalties and collection costs associated with the tax levy in 2018 - (1) whether, for 2013, Taxpayers were Indiana residents and were required to file a 2013 IT-40 return to report and pay their Indiana income, (2) whether Taxpayers were entitled to penalty abatement, (3) whether Taxpayers were not liable for collection costs - are now *moot*.

Taxpayers subsequently filed the required 2013 IT-40 return in January 2020. Taxpayers' 2020 filing was a refund claim based on their income tax return, which is separate and different from the BIA assessment. The Department processed the refund and granted a refund based on that return filed in 2020. In other words, Taxpayers are precluded from arguing the above issues in 2020 because these issues are beyond the scope of their 2020 refund.

Even if, for the sake of argument, Taxpayers were permitted to raise and revisit the issues of penalty abatement and collection costs in this case, the Department is not able to agree that Taxpayers were entitled to a refund of either. Specifically, the late penalty was properly imposed because the Department's records showed that Taxpayers' 2013 IT-40 return was filed in January 2020, several years beyond the statutory due date, April 15, 2014. The Department's records further showed that for 2013, Taxpayers did not make any estimated tax payments as required under IC § 6-3-4-4.1; therefore, Taxpayers were responsible for the underpayment penalty. Specifically, in this instance, Taxpayers did not provide any documentation to support their position concerning the penalty abatement. Therefore, Taxpayers' argument must fail.

In addition, and for argument's sake, Taxpayers argued that they were entitled to the refund of collection costs incurred in 2018. Taxpayers are mistaken. As mentioned earlier, the Department properly notified Taxpayers within the specified due dates stated in the notices of proposed assessment and subsequent demand for payment to resolve the issue. Taxpayers did not timely respond to those notices. After the tax levy, the Department held a hearing in 2019, and issued the LOF, addressing Taxpayers' protest. Taxpayers did not provide any documents to support their position that the tax levy was erroneously imposed in the prior protest. Similarly, here, Taxpayers did not provide any supporting documents to substantiate that the tax levy was erroneous but simply point to the Department's refund in 2020. As explained earlier, the Department's refund based on Taxpayers' tax filing does not support their position that tax levy was erroneous. In short, the Department followed statutory procedures each step of the way and the collection agency retained a portion of the money as a result of completing its collection effort.

Finally, statutory interest is mandatory when Taxpayers did not timely file their 2013 return and pay the tax before the statutory due date. IC § 6-8.1-10-1(a). The Department does not have the authority to waive the interest. IC § 6-8.1-10-1(e).

In conclusion, given the totality of the circumstances, in the absence of other supporting documentation, Taxpayers were responsible for the interest, late penalty, and underpayment penalty. The Department had refunded the overpayment to Taxpayers based on their 2020 filing. The collection costs were not retained by the Department and, therefore, in the absence of Department error, the Department is not able to refund the collection costs.

FINDING

Taxpayers' protest is respectfully denied.

September 22, 2020

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