

Final Order Denying Refund: 01-20210098
Individual Income Tax
For the Year 2016

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

Individuals were not entitled to an additional refund because they failed to timely notify the Indiana Department of Revenue within 180 days of the federal modifications.

ISSUE

I. Indiana Individual Income Tax - Claim for Refund - Statute of Limitations.

Authority: IC § 6-3-4-6; IC § 6-8.1-6-1; IC § 6-8.1-9-1; *Smith v. Indiana Dep't of State Revenue*, 122 N.E.3d 484 (Ind. Tax Ct. 2019); [45 IAC 15-9-2](#); General Tax Information Bulletin 100 (December 2019).

Taxpayers protest the denial of their refund of income tax for 2016.

STATEMENT OF FACTS

Taxpayers are individuals who have income derived from Indiana source. Taxpayers file their Indiana income tax returns, reporting and remitting income tax on the income derived from Indiana source.

Taxpayers' 2016 return was audited by the Internal Revenue Service ("IRS"). On January 31, 2020, the IRS issued a Form 4549 (Report of Income Examination Changes) and a Form 4549B (Income Tax Examination Changes), adjusting Taxpayers' 2016 federal income tax return. On or about February 10, 2020, Taxpayers signed, accepting the changes.

On or about January 17, 2021, Taxpayers amended their Indiana income tax return requesting a refund. The Indiana Department of Revenue ("Department") reviewed the filing and denied Taxpayers' refund request in full on the ground that the refund request was not timely.

Taxpayers protested the Department's refund denial. A hearing was held. This Final Order Denying Refund ensues. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Claim for Refund - Statute of Limitations.

DISCUSSION

Upon reviewing Taxpayers' 2016 amended return and relevant supporting documentation, the Department, on February 4, 2021, denied Taxpayers' refund request. The Department determined that Taxpayers' amended filing - postmarked January 17, 2021 - was not timely.

Taxpayers disagreed, claiming that the Department erroneously denied their refund claim. In particular, Taxpayers stated the following:

Pursuant to Indiana Code § 6-8.1-9-1(j), if a taxpayer's federal income tax is modified, with a resulting reduction in the amount of tax due, the taxpayer must file a refund claim with the department by the **latest of:**

- Three years from the return due date or the payment date (November 15, 2020);
- 180 days after the date of federal modifications (February 21, 2021) . . .

[Taxpayers filed their] 2016 Form IT-40X on February 8, 2021 to reflect the federal modifications made to the 2016 Form 1040. The later of the above dates is February 21, 2021 which is 180 days from August 25, 2020,

the date the federal examination letter was issued (**emphasis in original**).

Taxpayers asserted that they were entitled to the refund because they timely amended their Indiana income tax return within the statute of limitations under IC § 6-8.1-9-1(j). The issue thus is whether Taxpayers demonstrated that they were entitled to the refund because they timely filed their amended return for 2016.

In general, if a person has paid more tax than the person determines is legally due for a particular taxable period, IC § 6-8.1-9-1(a) provides that the person may file a claim for a refund with the Department within three (3) years after the later of (1) the due date of the return or (2) the date of payment. Pursuant to IC § 6-8.1-6-1, the statutory due date may be extended. Additionally, [45 IAC 15-9-2](#) outlines the general requirements to claim the refund. See also General Tax Information Bulletin 100 (December 2019), 20200401 Ind. Reg. 045200136NRA.

IC § 6-8.1-9-1(j), in relevant part, further provides:

If a taxpayer's federal taxable income, federal adjusted gross income, or federal income tax liability for a taxable year is **modified by the Internal Revenue Service**, and the modification would result in a reduction of the tax legally due, the due date by which the taxpayer must file a claim for refund with the department is **the latest of:**

- (1) the date determined under subsection (a);
- (2) **the date that is one hundred eighty (180) days after the date of the modification by the Internal Revenue Service as provided under:**
 - (A) **IC [§] 6-3-4-6(c) and IC [§] 6-3-4-6(d) (for the adjusted gross income tax) . . . (Emphasis added).**

Additionally, IC § 6-3-4-6, in relevant part, provides:

- (b) **Each taxpayer shall notify the department of any modification** as provided in subsection (c) of:
 - (1) a federal income tax return filed by the taxpayer after January 1, 1978; or
 - (2) the taxpayer's federal income tax liability for a taxable year which begins after December 31, 1977.

The taxpayer shall file the notice on the form prescribed by the department within one hundred twenty (120) days after the modification is made if the modification was made before January 1, 2011, and one hundred eighty (180) days after the modification is made if the modification is made after December 31, 2010.

- (c) For purposes of subsection (b), a modification occurs on the date on which a:
 - (1) taxpayer files an amended federal income tax return;
 - (2) final determination is made concerning an assessment of deficiency;
 - (3) final determination is made concerning a claim for a refund;
 - (4) taxpayer waives the restrictions on assessment and collection of all, or any part, of an underpayment of federal income tax by signing a federal Form 870, or any other Form prescribed by the Internal Revenue Service for that purpose. For purposes of this subdivision:
 - (A) a final determination does not occur with respect to any part of the underpayment that is not covered by the waiver; and
 - (B) if the signature of an authorized representative of the Internal Revenue Service is required to execute a waiver, the date of the final determination is the date of signing by the authorized representative of the Internal Revenue Service.
 - (5) taxpayer enters into a closing agreement with the Internal Revenue Service concerning the taxpayer's tax liability under Section 7121 of the Internal Revenue Code that is a final determination. The date the taxpayer enters into a closing agreement under this subdivision is the date the closing agreement is signed by an authorized representative of the Internal Revenue Service; or
 - (6) modification or alteration in an amount of tax, is otherwise made that is a final determination; for a taxable year, regardless of whether a modification results in an underpayment or overpayment of tax.
- (d) For purposes of subsection (c)(2) through (c)(6), a final determination means an action or decision by a taxpayer, the Internal Revenue Service (including the Appeals Division), the United States Tax Court, or any other United States federal court concerning any disputed tax issue that:
 - (1) is final and conclusive; and
 - (2) cannot be reopened or appealed by a taxpayer or the Internal Revenue Service as a matter of law.

(e) If the federal modification results in a change in the taxpayer's federal or Indiana adjusted gross income, the taxpayer shall file an Indiana amended return within one hundred twenty (120) days after

the modification is made if the modification was made before January 1, 2011, and **one hundred eighty (180) days after the modification is made if the modification is made after December 31, 2010.**

(Emphasis added).

In this instance, first, it should be noted that the Department's records showed that Taxpayers' original 2016 return was filed and postmarked October 17, 2017. In that initial filing, Taxpayers included an extension request (Form 4868, Application for Automatic Extension of Time To File U.S. Individual Income Tax Return). But the Department did not grant the extension. As such, the due date of Taxpayers' return for 2016 remained unchanged, namely, April 18, 2017. Thus, to timely claim the refund for 2016 under IC § 6-8.1-9-1(a), Taxpayers were required to file their 2016 amended return on or before Monday, April 20, 2020. Even if, for the sake of argument, assuming that the extension was granted, Taxpayers were required to file their 2016 amended return on or before October 19, 2020, to timely claim the refund pursuant to IC § 6-8.1-9-1(a). Taxpayers filed their amended return in January 2021, which was beyond the three-year statute of limitations. Regardless of the extension request, Taxpayers were not entitled to the refund in question under IC § 6-8.1-9-1(a).

Second, throughout the protest process, Taxpayers in this case argued that the IRS letter, dated August 25, 2020, was a federal modification. As such, Taxpayers asserted that (1) they filed their 2016 amended return within 180 days after August 25, 2020, and (2) their filing was timely - before February 21, 2021 - pursuant to IC § 6-8.1-9-1(j).

Upon review, however, Taxpayers' reliance of the IRS August 25, 2020, letter is misplaced. In this instance, the IRS letter in question did not make any changes to Taxpayers' 2016 federal taxable income, federal adjusted gross income, or federal income tax liability. Therefore, the IRS letter was not a federal modification.

Upon further review, Taxpayers' documentation demonstrated that the IRS issued a Revenue Agent Report - namely, Forms 4549 and 4549B - on January 31, 2020. The Report specifically detailed the changes, which constituted the federal modification concerning Taxpayers' 2016 federal taxable income, federal adjusted gross income, or federal income tax liability under IC § 6-8.1-9-1(j).

Upon issuance of the Forms 4549 and 4549B, Taxpayers were given 30 days to challenge the changes made by the IRS Report, but Taxpayers did not do so. Rather, Taxpayers' supporting documentation demonstrated that both Taxpayers signed Forms 4549, agreeing to the changes - the modification made by the IRS - on February 10, 2020. Therefore, the signed Forms 4549 and 4549B triggered Taxpayers' statutory requirement for Indiana income tax purposes pursuant to IC § 6-3-4-6(b). As such, IC § 6-3-4-6 and IC § 6-8.1-9-1, acting in concert, must apply here in determining whether Taxpayers timely amended their Indiana returns to claim the refund for 2016. In other words, by signing and agreeing to the changes made by the IRS Report on February 10, 2020, the federal modification became final and conclusive. Therefore, pursuant to IC § 6-8.1-9-1(j) and IC § 6-3-4-6, Taxpayers were required to file their amended return within 180 days - after February 10, 2020 - to timely claim the refund for 2016. *Cf. Smith v. Indiana Dep't of State Revenue*, 122 N.E.3d 484, 488-89 (Ind. Tax Ct. 2019)(explaining that the execution of the Form 870-AD proves the taxpayers' RARs lack the finality that results in the actual changes to their federal or Indiana adjusted gross income). Taxpayers' supporting documentation however demonstrated that they filed their 2016 amended Indiana income tax return in January 2021, more than 300 days later.

In summary, pursuant to the above applicable Indiana law, given the totality of the circumstances, in the absence of other verifiable supporting documentation, Taxpayers' 2016 amended return was filed beyond the three-year statute of limitations and more than 180 days after the federal modification became final and conclusive. Therefore, Taxpayers' refund claim was not timely.

FINDING

Taxpayers' protest of the Department's refund denial is respectfully denied.

July 16, 2021

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