

Final Order Denying Refund: 03-20211029
Withholding Tax
for the Tax Year 2017

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

Business did not file its refund request within the three-year statute of limitations. The Department was correct in denying the refund.

ISSUE

I. Withholding Tax - Statute of Limitations.

Authority: IC § 6-8.1-9-1; IC § 6-3-4-8; *Dep't. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the denial of refund.

STATEMENT OF FACTS

Taxpayer is an Indiana based business which operates a restaurant. Taxpayer filed requests for two different refunds - one related to tax year 2017 and another for tax year 2020. The 2020 refund request was issued and paid to Taxpayer. The Indiana Department of Revenue ("Department") denied the 2017 claim for refund because it was filed outside the three-year statute of limitations. Taxpayer requested resolution without a hearing, and this Order Denying Refund results. Additional facts will be provided as necessary.

I. Withholding Tax - Statute of Limitations.

DISCUSSION

The Department denied Taxpayer's 2017 refund request stating the request was outside the three-year statute of limitations under IC § 6-8.1-9-1. Taxpayer protested the denial of refund.

As a threshold issue, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. "[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).

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file claim for refund. This statute provides in 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 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. **(Emphasis added.)**

Under IC § 6-3-4-8(a), any employer "making payments of wages subject to tax under [Art. 6-3]. . . is required. . . to withhold, collect, and pay over income tax on wages paid. . . [and] deduct and retain therefrom the amount prescribed in withholding instructions issued by the department." Generally, an employer shall pay withholding taxes monthly; however, if the average monthly amount of withholding taxes for the previous calendar year does not exceed \$1,000, the employer may pay the tax by calendar year instead of monthly filings. IC § 6-3-4-8(b).

IC § 6-8.1-9-1(a) is clear that refund requests must be made within three years of the date of the payment or the date the return is due. Under [45 IAC § 3.1-1-101](#), "Each withholding agent shall send or deliver the state copy of

each withholding tax statement prepared by him, to the Department not later than **the last day of February, immediately following the end of the calendar year.**" (Emphasis added.)

The last day in February in the following calendar year was February 28, 2018. Taxpayer's withholding reconciliation return for tax year 2017 was due February 28, 2018. Three years from that date was February 28, 2021. February 28, 2021 was a Sunday so the three year statute of limitations ended March 1, 2021. Taxpayer requested the 2017 refund in July 2021. This is beyond the statutorily allowed statute of limitations as required by IC § 6-8.1-9-1(a). The Department was correct when it denied the 2017 refund.

FINDING

Taxpayer's protest is denied.

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