

**Memorandum of Decision: 03-20210025
Withholding Tax****For The Tax Years 2012, 2013, 2014, 2015, and 2016**

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HOLDING

College's request for a refund was timely and not outside the statute of limitation. Thus, the Department's denial was incorrect.

ISSUE**I. Withholding Tax - Statute of Limitations.**

Authority: IC § 6-3-4-8; IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [45 IAC 3.1-1-97](#).

Taxpayer protests the denial of refund.

STATEMENT OF FACTS

Taxpayer is an Indiana based college. Taxpayer timely filed monthly withholding tax returns during tax years 2012, 2013, 2014, 2015, and 2016. At the end of each tax year, Taxpayer timely filed Form WH-3, the annual withholding reconciliation form. On each tax year's Form WH-3, Taxpayer requested a refund.

In November 2020, Taxpayer filed a Claim for Refund Form GA-110L and requested refunds related to the withholding taxes for tax years 2012, 2013, 2014, 2015, and 2016. The Indiana Department of Revenue ("Department") denied the refunds stating the request was outside the statute of limitations. Taxpayer protested the denial. An administrative hearing was held. This Memorandum of Decision results. Additional facts will be provided as necessary.

I. Withholding Tax - Statute of Limitations.**DISCUSSION**

Taxpayer protests the Department's denial of its claim for refund of withholding taxes for tax years 2012, 2013, 2014, 2015, and 2016. The Department based its decision on its determination that Taxpayer filed its claim past the date of statute of limitations found under IC § 6-8.1-9-1. The issue is whether Taxpayer's refund requests were timely.

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 of 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 latter of the following:

- (1) **The due date of the return.**
- (2) The date of payment. (**Emphasis added.**)

IC § 6-3-4-8(a) provides that employers must "withhold, collect, and pay over income tax on wages paid [to] . . . employee[s]." Employers collecting withholding amounts averaging more than \$1,000 per month must file monthly withholding returns due on the thirtieth (30th) day of the following month. IC § 6-3-4-8(b); [45 IAC 3.1-1-97](#). Employers collecting withholding must then file Form WH-3, an annual withholding tax report, no later than thirty-one days after the end of the calendar year. IC § 6-3-4-8(e).

In support of its protest, Taxpayer explained that, beginning in 2010, Indiana required electronic submission of W-2s by filing the forms via INTAX or a bulkload filing process. Taxpayer stated that after filing the W-2s and Form WH-3 via the bulkload process, Taxpayer would receive a letter from the Department for the tax year showing the reconciliation of withholding amounts. Any refund due would be automatically processed. For tax year 2011, Taxpayer used this bulkload filing process, and the requested refund was processed without issue. Taxpayer used the same filing procedure for tax year 2012; however, the Department did not issue the requested refund.

Taxpayer began contacting the Department for additional information. One time, Taxpayer was told that it needed to file an amended Form WH-3. Another time, Taxpayer was advised by the Department that there was no need to file paper forms, and the Department would automatically reconcile the account. Taxpayer was later contacted by the Department regarding Form 1099-R. Taxpayer was then told it looked like some required forms had not been filed, and Taxpayer needed to submit forms related to the W-2s.

When the Department switched the online tax filing system from INTAX to INTIME, Taxpayer noted that refunds could be electronically requested in INTIME. For tax years 2017 through 2020, Taxpayer filed its withholding returns electronically via INTIME, amended those returns when necessary, and was issued the appropriate refunds without issue. Because Taxpayer was still awaiting refunds from tax years 2012, 2013, 2014, 2015, and 2016, Taxpayer again contacted the Department. In November 2020, Taxpayer was advised to file Form GA-110L to request a refund for those tax years. Taxpayer filed Form GA-110L as directed, and the refund was denied.

The Department denied Taxpayer's refund request stating it was outside of the statute of limitations for all tax years. The Department's review of the refund request was based strictly on the submission date of Form GA-110L. Using tax year 2016 as an example, under IC § 6-8.1-9-1(a), a refund must be requested within three years of the due date of the return. Taxpayer was required to file its annual withholding reconciliation Form WH-3 by January 31, 2017. Three years from that date is January 31, 2020. The refund request was not made until November 2020, a date clearly beyond the cutoff of January 31, 2020. Considering only the filing date of Form GA-110L, the refund request appears untimely and out of statute on its face. However, a review of Taxpayer's account shows that Taxpayer's refund requests were timely and provides a different result.

Taxpayer timely filed its monthly withholding returns for all the tax years at issue. Taxpayer also timely filed Form WH-3 for each tax year. Specific details relevant to each tax year are listed below.

- 2012 - Taxpayer's return was lengthy and referred to attachments. The last page of the return shows the refund amount requested.
- 2013 - Taxpayer properly claimed the refund, and the request was timely.
- 2014 - Taxpayer did not list a specific amount in the refund claimed box; however, Taxpayer again referred to attachments. The attachments included the refund amount requested.
- 2015 - Taxpayer properly claimed the refund, and the request was timely.
- 2016 - Taxpayer properly claimed the refund, and the request was timely.

In 2012, 2013, 2014, 2015, and 2016, Taxpayer timely filed all the required withholding returns and timely requested the related refunds. The Department erred when it did not fully examine Taxpayer's returns and process them correctly. Additionally, for tax years 2015 and 2016, Taxpayer's returns were completed correctly. Both of these returns were adjusted to remove an overpayment, and when the adjustment occurred, the Department should have released the refund to Taxpayer. Unfortunately, the Department failed to do so. In short, had the Department processed the returns correctly when originally filed for tax years 2012, 2013, 2014, 2015, and 2016, Taxpayer's refunds would have been issued immediately.

Thus, after closer review of Taxpayer's account, the refunds requested for tax years 2012, 2013, 2014, 2015, and 2016 were timely and not outside of the statute of limitations. The Department's denial on that basis was incorrect. Taxpayer's protest is sustained. To be clear, Taxpayer is sustained due to the fact that the original withholding forms correctly and timely requested the refunds. The November 2020 refund claim was unnecessary since there were already valid and unresolved refund claims in place. The Department will issue refunds to Taxpayer with corresponding interest for the associated tax years.

FINDING

Taxpayer's protest is sustained.

November 29, 2022

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