

Final Order Denying Refund: 02-20211046
Corporate Income Tax
For the Tax Year beginning April 1, 2016 and ending March 31, 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

Indiana Business was not entitled to the refund because it failed to demonstrate that it timely filed its refund claim.

ISSUE

I. Corporate Income Tax - Timeliness.

Authority: [IC 6-3-4-6](#); [IC 6-3.1-4-8](#); [IC 6-8.1-5-2](#); [IC 6-8.1-9-1](#); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Medco Health Sols., Inc. v. Indiana Dep't of State Revenue*, 9 N.E.3d 263 (Ind. Tax Ct. 2014); [45 IAC 15-9-2](#).

Indiana company argued that it was entitled to refund.

STATEMENT OF FACTS

Taxpayer is an Indiana company, which files Indiana corporate income tax returns reporting its Indiana income tax due. In January 2018, Taxpayer filed an Indiana corporate income tax return for the tax year beginning April 1, 2016 and ending March 31, 2017 (the "tax year 2016" or "Tax Year at Issue"). The initial filing due date of the corporate income tax return for the Tax Year at Issue was extended to February 15, 2018.

In May 2021, more than three years later, Taxpayer filed an amended return for the Tax Year at Issue, claiming that it was entitled to additional refund. The Indiana Department of Revenue ("Department") reviewed and denied Taxpayer's refund on the ground that Taxpayer's refund claim was not timely.

Taxpayer protested the refund denial. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Final Order Denying Refund results. Further facts will be provided, as necessary.

I. Corporate Income Tax - Timeliness.

DISCUSSION

The Department reviewed and denied Taxpayer's refund claim on the ground that the claim was not timely. In an August 18, 2021, letter, the Department explained, in relevant part:

Indiana Code § 6-8.1-9-1 states that in order to receive a refund, a claim must be filed within three years after the due date of the return or date of payment, whichever is later. Your request and claim for a refund were filed outside of the time frame and thus must be denied for the following filing period: March 31, 2017.

Taxpayer protested the refund denial. Taxpayer agreed that its refund claim was filed beyond the general three-year statute of limitations under [IC 6-8.1-9-1\(a\)](#). Nonetheless, Taxpayer claimed that (1) it timely filed its amended return for the Tax Year at Issue under [IC 6-3-4-6](#), (2) it was entitled to additional refund, and (3) the Department erred in denying Taxpayer's refund claim.

In its October 12, 2021, letter, Taxpayer stated, in relevant part:

The Taxpayer did file the IN amended return on May 13, 2021 to amend for the Federal return and Indiana Research Credit. While, yes, the return was amended outside the three-year statute, as cited by the Department, this statute is not applicable in this situation due to the fact that a Federal Amended return was

filed to claim a credit for the same research expenses and the increase in the Federal taxable due to the expense disallowance.

The issue, therefore, is whether Taxpayer sufficiently demonstrated that it was entitled to the refund and the Department erred in denying that refund. 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). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

The Department generally "has no legal method of generating a claim for refund. **A claim for refund can only be initiated pursuant to IC 6-8.1-9-1.**" [45 IAC 15-9-2](#)(b)(**Emphasis added**). [IC 6-8.1-9-1](#)(a) (applicable to the Tax Year at Issue), in part, states:

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. **Except as provided in subsections (j), (k) and (l), in 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.

For purposes of this section, the due date for a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax is the end of the calendar year which contains the taxable period for which the return is filed. The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund.

(**Emphasis added**).

[IC 6-8.1-9-1](#)(j)(applicable to the Tax Year at Issue) 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); or
 - (B) [IC 6-5.5-6-6](#)(c) and [IC 6-5.5-6-6](#)(d) (for the financial institutions tax); or
- (3) in the case of a modification described in [IC 6-8.1-5-2](#)(j)(1) through [IC 6-8.1-5-2](#)(j)(3), December 31, 2021.

(**Emphasis added**).

Accordingly, when a taxpayer determines that it overpaid tax, the taxpayer must timely file an Indiana income tax return or timely amend its income tax returns, stating the overpayment as prescribed by the Department in order to claim a refund. In addition, the taxpayer must file the claim by amending its return within three-year statute of limitations from either the due date of the return or the date of payment. [IC 6-8.1-9-1](#)(a). When the overpayment is a result of a modification by the Internal Revenue Service ("IRS"), the taxpayer must file within one hundred eighty (180) days after the date of the modification by the IRS. [IC 6-8.1-9-1](#)(j); [45 IAC 15-9-2](#); see also *Medco Health Sols., Inc. v. Indiana Dep't of State Revenue*, 9 N.E.3d 263, 266 (Ind. Tax Ct. 2014). When a refund of income tax is claimed under [IC 6-8.1-9-1](#)(j), it must work in tandem with [IC 6-3-4-6](#)(c) and (d) to provide the Department adequate notice, as statutorily required, in determining timeliness of the refund.

[IC 6-3-4-6](#) (applicable to the Tax Year at Issue) primarily addresses "notice of modification," which is the statutorily required notice to the Department. [IC 6-3-4-6](#), in relevant part, states:

(a) Any taxpayer, upon request by the department, shall furnish to the department a true and correct copy of any tax return which the taxpayer has filed with the United States Internal Revenue Service which copy shall be certified to by the taxpayer under penalties of perjury.

- (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 or by the taxpayer, whichever is later;
 - (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 by the taxpayer, whichever is later; or
 - (6) modification or alteration in an amount of tax, adjusted gross income, taxable income, credit, or other tax attribute 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. In the case of a taxpayer that files a consolidated return under section 14 of this chapter or either files or is required to be included by the department in a combined return under [IC 6-3-2-2](#), the date on which the alteration or modification is made shall be considered to be the last day on which an alteration or modification occurs for any entity filing as part of the consolidated or combined return.

- (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.

(Emphasis added).

Taxpayer, in this instance, referenced IC§ 6-3.1-4-8(c) and 6-3-4-6, asserting that it timely amended its return to claim its refund for the Tax Year at Issue. Taxpayer explained that it did not have an IRS audit and this refund was not based on the federal RAR adjustment. Taxpayer specifically stated the following:

Since the 2016 Federal return was amended for the Research & Development Credit under Section 41(a)(1), therefore the Indiana return is required to be modified by [IC] 6-3.1-4-8(c) in accordance with IC [§] 6-3-4-6. [Taxpayer] timely modified its 2016 Indiana to include the Indiana R&D credit. The modified 2016 Indiana returns was filed on May 17, 2021 which is within the 180 days of the Federal amended return filed on January 12, 2021 as required by IC [§] 6-3-4-6.

Taxpayer further offered its Research & Development Tax Credit Analysis to support its protest.

Upon review, however, Taxpayer's reliance of [IC 6-3.1-4-8\(c\)](#) and [IC 6-3-4-6](#) is misplaced. As mentioned earlier, the Department "has no legal method of generating a claim for refund. A claim for refund can only be initiated pursuant to IC [§] 6-8.1-9-1." [45 IAC 15-9-2\(b\)](#). As such, the Department is not able to agree that Taxpayer's filing of a notice constitutes a refund claim under [IC 6-3.1-4-8\(c\)](#) and [IC 6-3-4-6](#) because a refund claim cannot be initiated under [IC 6-3-4-6](#). The requirement to file documentation with the Department under [IC 6-3-4-6](#) is to address "notice of modification" and not "claim for refund."

Specifically, in this instance, Taxpayer filed an amended return for the Tax Year at Issue to claim the refund based on [IC 6-3.1-4-8\(c\)](#). According to Taxpayer's statement, on January 12, 2021, Taxpayer filed its amended federal return for the Tax Year at Issue, and on May 17, 2021, Taxpayer filed its amended Indiana income tax return for the Tax Year at Issue. Taxpayer's documents demonstrated that Taxpayer provided a "notice of modification" regarding its federal filing status to the Department within 180 days, as required under [IC 6-3-4-6\(b\)](#) and (c)(1). When a taxpayer timely notified the Department a modification, as Taxpayer has done in this case, the notice of that modification set "[t]ime limitation on issuance of proposed assessment" pursuant to [IC 6-8.1-5-2\(j\)](#).

There is no dispute that Taxpayer here acknowledged that its May 17, 2021, amended return was filed beyond three-year statute of limitations. As such, Taxpayer's refund was barred pursuant to [IC 6-8.1-9-1\(a\)](#). Also, Taxpayer here acknowledged that its May 17, 2021, amended return was not based on an IRS audit and there was no federal modification. Since this was not a federal modification under [IC 6-3-4-6\(c\)](#) and [IC 6-3-4-6\(d\)](#), [IC 6-8.1-9-1\(j\)](#) is not applicable.

In conclusion, without IRS modification, Taxpayer's refund claim can only be initiated under [IC 6-8.1-9-1\(a\)](#). Given the totality of the circumstances, in the absence of other documentation, Taxpayer failed to demonstrate that it was entitled to the refund, which was beyond the three-year statute of limitations.

FINDING

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

January 13, 2023

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