DEPARTMENT OF STATE REVENUE

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Final Order Denying Refund: 01-20221025, 01-20221026
Individual Income Tax
For The Tax Years 2013 and 2014

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

Married couple incorrectly amended tax returns based on provisions implemented by the federal government in the 2020 CARES Act. Indiana does not follow the federal rules upon which Taxpayers relied. The requested refunds based on the amended returns were outside the statute of limitations.

ISSUE

I. Individual Income Tax - Refund.

Authority: IC 6-3-1-3.5; IC 6-3-2-2.5; IC 6-8.1-6-1; IC 6-8.1-9-1; *Dept. of State Revenue v Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); Income Tax Information Bulletin 116 (July 2018); Income Tax Information Bulletin 119 (May 2021); 26 USCA § 168; 26 USCA § 172; *About the CARES Act and the Consolidated Appropriations Act*, https://home.treasury.gov/policy-issues/coronavirus/about-the-cares-act.

Taxpayers protest the denial of refunds.

STATEMENT OF FACTS

Taxpayers are Indiana residents ("Husband" and "Wife"), married filing jointly. For tax years 2013 and 2014, Taxpayers timely filed their individual income tax returns. In 2020, Taxpayers filed amended tax returns for tax years 2013, 2014, 2018, and 2019. Taxpayers amended their returns based on provisions of the federal CARES Act related to Covid-19 Economic Relief they believed applied to them. All changes in the amended returns stemmed from amendments made to the 2018 return and items that were either carried back or carried forward to the other tax years. As a result of the amended returns, Taxpayers requested refunds of varying amounts for all four of the amended tax years. The Indiana Department of Revenue ("Department") denied the refunds for tax years 2013 and 2014 as being outside the statute of limitations.

Taxpayers protested the refund denials. An administrative hearing was held, and Wife presented Taxpayers' position. This Final Order Denying Refund results. Additional facts will be provided as necessary.

I. Individual Income Tax - Refund.

DISCUSSION

The Department determined Taxpayers were not entitled to a refund for tax years 2013 and 2014 because both refund claims were requested outside of the three-year statute of limitations specified in IC 6-8.1-9-1.

Taxpayers argued that the federal CARES Act allowed for certain amendments to their returns, resulting in refunds due to them for multiple tax years. Taxpayers explained during the administrative hearing that they felt issues/refunds related to tax years 2018 and 2019 were resolved to their satisfaction and the only outstanding items were the denied refunds for tax years 2013 and 2014.

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 a 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 a refund with the department.

The CARES Act (2020) was passed by the U.S. Congress to provide direct economic relief to Americans as a result of the Covid-19 pandemic. *About the CARES Act and the Consolidated Appropriations Act*, https://home.treasury.gov/policy-issues/coronavirus/about-the-cares-act (last visited Dec. 6, 2022). Subsequent to the federal government enacting the CARES Act, the Department updated Income Tax Information Bulletin 119 (May 2021), 20210602 Ind. Reg. 045210192NRA, to reflect the Department's interpretation of provisions associated with the CARES Act. As noted in Information Bulletin 119, federal legislation is commonly enacted after a specified date but prior to when the Indiana General Assembly reconvenes each year. Thus, changes made to the federal code are not immediately captured (enacted) by Indiana until the General Assembly reconvenes. Such provisions may have a different effective date, may be retroactive, or may not be followed by Indiana.

Additionally, the CARES Act also changed the depreciation life for Qualified Improvement Property ("QIP") from a 39-year property to a 15-year property. This change allowed property to be subject to bonus depreciation under 26 USCA § 168(k). Indiana did not adopt this provision at the time the CARES ACT was enacted; however, Indiana will allow QIP to be subject to the 15-year depreciation under federal law retroactively pursuant to the updated Internal Revenue Code conformity date of March 31, 2021. The retroactivity applies to all years for which the 15-year class life for QIP applies; however, Indiana generally disallows bonus depreciation, so any bonus depreciation claimed on QIP is subject to modifications otherwise required under Indiana law. *See* Information Bulletin 119.

IC 6-3-2-2.5 allows Indiana taxpayers to claim a Net Operating Loss ("NOL") based on the taxpayer's federal net operating loss for a tax year as calculated under Section 172 of the Internal Revenue Code and adjusted for certain modifications required by IC 6-3-1-3.5.

Income Tax Information Bulletin 116 (July 2018), 20180725 Ind. Reg. 045180312NRA, explains:

> Notwithstanding the federal changes to net operating losses (generally, 80[percent] of taxable income and an unlimited carryforward period), Indiana will continue to allow net operating losses to be deducted up to 100[percent] of Indiana adjusted gross income. In addition, Indiana will continue to have a 20-year carryforward of net operating losses from a given year. **Finally, Indiana will continue to not permit net operating loss carrybacks.**
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> For all taxpayers, the net operating loss calculation will follow the federal net operating loss calculation, with the modifications in IC 6-3-1-3.5 used to increase or decrease the Indiana net operating loss (prior to any apportionment or allocation). However, any deductions under IC 6-3-2 are not permitted in determining net operating losses. (**Emphasis added.**)

Information Bulletin 119 specifically addresses the interaction of NOLs and the CARES Act. The CARES Act amended 26 USCA § 172 to permit NOL carrybacks and increased the allowance of NOL carryforwards. Indiana adopted the changes made to the Internal Revenue Code, effective March 31, 2021; however, because Indiana already had a specific addback provision related to NOLs, the net effect was no change. Thus, Indiana does not allow NOLs to be carried back. The only change due to the CARES Act was the amount allowed for an Indiana modification compared to previous years.

Taxpayers explained during the administrative hearing that they "built out" their business property in 2017. After reviewing the CARES Act, Taxpayers determined the build out created a NOL for tax year 2018. Because the CARES Act allowed for NOLs to be carried back, Taxpayers explained the first available tax year for them to carryback the NOL was 2013. The NOL carryback to 2013, then generated subsequent changes to their returns for tax years 2014, 2018, and 2019. Taxpayers filed amended federal and Indiana returns for tax years 2013, 2014, 2018, and 2019, and each year's amended return generated an Indiana refund per Taxpayers' calculations.

After reviewing the materials submitted, the Department denied the 2013 and 2014 refunds stating the refunds were requested outside of the three-year statute of limitations. Taxpayers received refunds for tax years 2018 ($2,058) and 2019 ($654).

Additionally, the Department issued Taxpayers a refund check for approximately $12,000, offset by $2,000 of collected unemployment related to tax year 2014. This check was issued in error due to a duplication of credits within the Department's system. In short, after filing amended returns for 2013 and 2014, Taxpayers' account was updated to incorrectly reflect a double credit of withholding taxes. The duplication created a credit on the account, which in turn generated the refund. The refund check was issued in error, and Taxpayers were never entitled to this amount.

Taxpayers' Indiana returns for tax years 2013 and 2014 were filed correctly at the time the returns were originally filed. Taxpayers were also correct on their federal amended returns to carry back the federal NOLs to tax years 2013 and 2014 in order to correctly calculate their federal adjusted gross income. However, IC 6-3-1-3.5 requires an addback on the Indiana returns of the federal NOLs deducted. IC 6-3-2-2.5 created a standalone Indiana NOL which cannot be carried back. The Department will make the necessary adjustments to Taxpayers' 2013 and 2014 tax year returns internally using the information provided on the originally filed returns. The correction will be noted in the Department's system to reflect the details of this Final Order Denying Refund and prevent further confusion related to these two tax years.

As noted in IC 6-8.1-9-1(a), a request for refund must be filed within three years after the due date of the return absent any request for an extension. The filing date for tax year 2013 was Tuesday, April 15, 2014, and Taxpayers filed their return on that date and did not request an extension. Ordinarily, this means that a refund request had to be made three years from the filing date which would be April 17, 2017. However, the District of Columbia and the federal government, including the IRS, observe Emancipation Day on April 16. In 2017, April 16 fell on a Sunday, and Emancipation Day was observed on Monday, April 17. Thus, the deadline for requesting a refund was April 18, 2017. Taxpayers did not file their amended return for tax year 2013 until March 11, 2021, well beyond the three-year deadline for requesting a refund.

The filing date for tax year 2014 was Wednesday, April 15, 2015. Taxpayers received a federal extension for tax year 2014, which extended their filing due date by six months to October 15, 2015. Under IC 6-8.1-6-1(c), Indiana adds an additional thirty days to the federal extension. Ultimately, Taxpayers filing deadline for tax year 2014 was November 14, 2015. Three years from November 14, 2015, is November 16, 2018, which was the deadline for Taxpayers to request a refund related to tax year 2014. Taxpayers filed their amended return on March 11, 2021, well beyond the three-year statute of limitations.

Taxpayers' requests for refund are denied. Since this decision will affect the available NOLs generated in tax year 2018 and their application in subsequent tax years, the Department will provide Taxpayers with additional processing documentation and instructions explaining how to correct their filings and NOL calculations.

FINDING

Taxpayers' protest is denied.

January 23, 2023

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An html version of this document.