

Final Order Denying Refund: 01-20221178
Indiana 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

Taxpayer filed a protest regarding the Indiana Department of Revenue's ("Department") refund denial for the year 2016, however Taxpayer failed to sufficiently develop the protest's argument.

ISSUE

I. Individual Income Tax - Claim for Refund

Authority: [IC 6-3-2-1](#); [IC 6-3-2-2](#); [IC 6-3-1-3.5](#); [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); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Express Scripts Inc. v. Indiana Dep't of State Revenue*, 170 N.E.3d 273 (Ind. Tax Court 2021).

Taxpayer protested the Department's denial of a claim for refund.

STATEMENT OF FACTS

Taxpayer's representative filed a Protest Submission Form ("Form") protesting the Department's denial of a claim for refund for the tax year 2016. On the Form, Taxpayer's representative checked the box indicating that "new documentation that has not been previously reviewed" by the Department was included with the protest and that Taxpayer wanted a "Final determination without a hearing." The latter states that a taxpayer waives the right to a hearing and "asks the Department to make its decision based on the written protest and documentation" As part of the protest Taxpayer's representative sent in the following: (1) the Protest Submission Form; (2) the POA-1 form; (3) the written protest letter; (4) a copy of the Department's refund denial letter; and (5) copies of 2016 W-2's for the couple.

In January of 2023 the Department e-mailed the representative regarding the fact that the Protest Submission Form and the protest letter listed the married couple (referred to herein, as needed for clarity, as either Taxpayer or Taxpayer 2), but that the Power of Attorney form (POA-1) that he had provided with the protest for his representation only listed one of the two people (namely, Taxpayer). The Department asked that he provide a POA-1 form for Taxpayer and Taxpayer 2 if both were part of the protest and represented by him; the Department also asked the representative to clarify the protest and provide any relevant supporting documentation to the Department by a specific date. That date has passed, and the Department did not receive a POA-1 form for Taxpayer 2. The Department also did not receive any further clarification/explanation of the protest nor any additional supporting documentation. This written decision is based upon information provided with the initial protest filing.

I. Individual Income Tax - Claim for Refund.

DISCUSSION

Indiana imposes an adjusted gross income tax on all residents. [IC 6-3-2-1\(a\)](#). Taxpayer's Indiana income is determined by starting with the federal adjusted gross income and making certain adjustments. [IC 6-3-1-3.5\(a\)](#). [IC 6-3-2-2\(a\)](#) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax.

In a letter dated December 20, 2021, the Department stated that it was denying the couple's claim for refund:

Indiana Code § 6-8.1-9-1 states that in order 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 refund were filed outside of the time frame and thus must be denied for the following filing period: December 31, 2016[.]

Refund claims are governed by [IC 6-8.1-9-1](#), which states in pertinent part that if "a person has paid more tax than the person determines is legally due for a particular taxable period" that the "person may file a claim for refund with the department." Further, the refund claim must be filed 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."

Turning to Taxpayer's February 9, 2022, protest letter, Taxpayer's representative states in thirteen numbered paragraphs:

1. Taxpayers hired [Legal Assistance] to help with the preparation of their 2016 tax return.
2. Original Indiana return (IT-40) was filed on or around April 7, 2017.
3. Taxpayers relied on professional help to file returns and they were filed incorrectly. Original federal return indicated filing status was married filing joint. Original state return indicated status was married filing separate.
4. Taxpayers are actively serving in the US military and their primary residence changes often.
5. Proposed assessment letter from the Indiana Department of Revenue dated September 23, 2019, was mailed to an old address.
6. Taxpayers did receive a number of letters from the state with proposed balances due and paid them. [The protest then lists six payment amounts but does not provide dates]. These payments totaled \$2,561.81 and were confirmed via a phone call with the Indiana Department of Revenue on February 9, 2022. It was also confirmed that these payments were in the old IDOR system and not in the new IDOR system. These payments are to be moved to the new system per my call.
7. Taxpayer filed an amended 2016 state return to correct the inaccurate filing status between the federal and state returns when they became aware of the situation.
8. Amended return also changed the return from IT-40 to IT-40PNR.
9. Amended return has been processed and was confirmed with the State.
10. Taxpayers do not have the same tax home for 2016.
11. [Taxpayer] w-2 has been attached to support income earned in 2016 and her tax home of IN covering this same period.
12. [Taxpayer 2] w-2 has been attached to support income earned in 2016 and her tax home of NV covering this same period.
13. Indiana shows an overpayment on taxpayers account of \$2,561.81 and has denied this refund due to state law.

Taxpayer's representative concludes the protest letter by stating:

I am requesting that the taxpayer's overpayment be refunded to them as relied on professional help, notices were sent to an old address, issues were addressed when they were made aware, the state of Indiana has corrected returns on file and their account indicates an overpayment for tax year ended December 31, 2016.

A taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. The Indiana Tax Court has noted that 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); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). A taxpayer, when submitting evidence as part of the taxpayer's protest, needs to specify and explain the portions of the evidence that taxpayer believes to be relevant. As the Indiana Tax Court has previously noted (in the context of a summary judgment motion): "the Court will not consider" exhibits "on the off chance that it might find, on its own and undirected, some fact that supports" a claim, and "the Court is not required to search for specific facts on which" a party relies. *Express Scripts Inc. v. Indiana Dep't of State Revenue*, 170 N.E.3d 273, 279 (Ind. Tax Court 2021).

In the present case there are in effect two issues, which the Department states as follows:

- (1) a threshold issue of whether the refund claim was timely filed; and
- (2) if filed timely, whether Taxpayer is entitled to the refund under Indiana law.

As noted, the Department informed the representative in an e-mail in January of 2023 that he would need to clarify what exactly his argument was and that he would need to provide any relevant supporting documentation. The Department held the protest open for the representative to provide the clarification. No further clarification/explanation regarding the protest was provided by Taxpayer.

With that in mind, the Department notes that even if, *arguendo*, the refund claim was filed timely, Taxpayer provided no cogent explanation or additional relevant supporting documentation as to why under Indiana law

Taxpayer would be entitled to the refund. Taxpayer's protest does not cite to any statutes, regulations, or cases, as part of the protest. Therefore, Taxpayer's protest is denied pursuant to *Scopelite*, *Wendt LLP*, and *Express Scripts Inc*. Taxpayer's protest does not constitute a sufficiently developed argument.

FINDING

Taxpayer's protest is denied.

April 24, 2023

Posted: 06/28/2023 by Legislative Services Agency
An [html](#) version of this document.