

Memorandum of Decision: 03-20221533
Withholding Tax
For the 2017 Tax Year

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 Memorandum of Decision.

HOLDING

Taxpayer provided documentation sufficient to establish that its claim for refund was not barred by the statute of limitations.

ISSUE

I. Withholding Tax - Statute of Limitations.

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

Taxpayer argues that the Department's refund denial for 2017 withholding tax was incorrect as an overpayment exists for that tax period.

STATEMENT OF FACTS

Taxpayer is a religious organization. Taxpayer filed a Protest Submission Form ("Form") protesting the Indiana Department of Revenue's ("Department") denial of a refund claim. Taxpayer marked on the Form "Final determination without a hearing." That selection means that a taxpayer is forgoing a hearing and asking the Department to "make its decision based on the written protest and documentation (if any) the taxpayer presents with the protest, and waives the right to a hearing." Thus, this Memorandum of Decision was written based upon the information provided by Taxpayer with its protest. Additional facts will be provided as necessary.

I. Withholding Tax - Statute of Limitations.

DISCUSSION

Taxpayer protests the refund denial, claiming that its payment of 2017 withholding tax should be refunded. The Department denied the claim based on the expiration of the statute of limitations to file a claim for refund.

"[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). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

[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.

And after listing some exceptions, the statute states:

[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.

An Indiana employer is required to "withhold, collect, and pay over income tax on wages paid by such employer to such employee . . . [in] the amount prescribed in withholding instructions issued by the department." [IC 6-3-4-8\(a\)](#).

Subsection (a)(1) specifically provides that the employer is liable for the amount that it was required to withhold. These statutory requirements are restated in [45 IAC 3.1-1-97](#), which also explains that "[i]n the case of delinquency or nonpayment of withholding tax, the employer is liable for such tax, penalties, and interest." *Id.*

The Department's denial letter, dated May 12, 2022, states in pertinent part that Taxpayer's protest was denied for failing to file the claim "within three years after the due date of the return or date of payment, which is later."

Taxpayer, in turn, states:

We are protesting the denial of the balance of our withholding tax refund of \$268.06 for the period ending December 31, 2017. The original overpayment shown as "Refund Claimed," line 4, was \$536.12 per the attached WH-3 for the period ending December 31, 2017, filed 1/31/2018. We believed this refund should have been mailed subsequent to the filing of the referenced WH-3. So, our initial claim for refund was made 1/31/2018 and the second request made 5/10/22 for the balanced, which was prompted by IDOR agent.

A review of the documentation provided by Taxpayer shows that Taxpayer requested a refund in 2018, thus the request was within the three-year time period outlined in [IC 6-8.1-9-1](#). Therefore, Taxpayer's refund request is timely. Since the Department's denial of the refund claim was regarding its purported untimeliness, this Memorandum of Decision only addresses that question. And, as noted *supra*, Taxpayer's refund claim was timely.

FINDING

Taxpayer's protest is sustained regarding timeliness. The Department's refund section is instructed to process Taxpayer's refund claim.

June 6, 2023

Posted: 08/30/2023 by Legislative Services Agency
An [html](#) version of this document.