

## DEPARTMENT OF STATE REVENUE

02-20221204.MOD  
02-20221205.MOD  
02-20221206.MOD  
02-20221207.MOD

**Memorandum of Decision: 02-20221204; 02-20221205;  
02-20221206; 02-20221207**  
**Corporate Income Tax**  
**For the Tax Years beginning January 1, 2009, and ending December 31, 2012**

**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 determination.

### HOLDING

Out-of-State Business demonstrated that it was entitled to the refunds because it timely filed its refund claims.

### ISSUE

#### I. Corporate Income Tax - Timeliness.

**Authority:** [IC 6-3-4-6](#); [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](#).

Out-of-State Business argued that it timely amended its returns and was entitled to refunds.

### STATEMENT OF FACTS

Taxpayer is a subsidiary of a foreign company ("Parent") and conducts business throughout the United States, including Indiana. Taxpayer files Indiana corporate income tax returns reporting its Indiana income tax due. Parent is headquartered in Germany.

In 2020, German Taxing Authority audited Parent's records for tax years 2009, 2010, 2011, and 2012 ("Tax Years at Issue"). To avoid double taxation, Taxpayer requested a Mutual Agreement Procedure pursuant to a tax treaty. A mutual agreement was finalized between German Taxing Authority and Internal Revenue Service ("IRS") in 2021. Taxpayer subsequently amended its federal income tax returns for the Tax Years at Issue.

In January 2022, Taxpayer amended its Indiana income tax returns for the Tax Years at Issue, claiming that it was entitled to additional refunds based on the finalized mutual agreement. The Indiana Department of Revenue ("Department") reviewed and denied Taxpayer's refunds on the grounds that Taxpayer's refund claims for the Tax Years at Issue were not timely.

Taxpayer protested the refund denials. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This final determination results. Further facts will be provided, as necessary.

#### I. Corporate Income Tax - Timeliness.

### DISCUSSION

The Department reviewed and denied Taxpayer's refund claims on the grounds that the claims were not timely. The Department explained, in 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[s] for [] refund were filed outside of the time frame and thus must be denied . . . .

Taxpayer protested the refund denials. Taxpayer claimed that (1) it timely filed its amended returns for the Tax

Years at Issue under [IC 6-3-4-6](#) and (2) the Department erred in denying Taxpayer's refund claims.

The issue, therefore, is whether Taxpayer sufficiently demonstrated that it was entitled to the refunds and the Department erred in denying Taxpayer's refund claims. 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), 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), [] 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.

[IC 6-8.1-9-1](#)(j) 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](#)(k)(1) through [IC 6-8.1-5-2](#)(k)(3), the date provided in [IC 6-3-4.5](#) for such refunds or December 31, 2021, whichever is later.

**(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 return, 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 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](#) 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 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, asserted that it timely amended its returns to claim its refund based on a mutual agreement under the tax treaty. Taxpayer specifically stated the following:

[Taxpayer] amended its Indiana corporation income tax returns for the tax periods ending 12/31/2009 through 12/31/2012, to reflect adjustments resulting from federal amended returns. The basis for the amendments is a mutual agreement with Germany . . . . Taxpayer filed amended federal returns for tax periods 12/31/2009 through 12/31/2012 to claim refunds.

As required by Ind. Code § 6-3-4-6(b), amended Indiana corporation income tax returns are due within 180 days after a modification is made to a corporate taxpayer's federal income tax liability. Taxpayer filed its amended Indiana corporation income tax returns for the tax periods ending 12/31/2009 through 12/31/2012 within 180 days from the date modifications were made to its federal income tax liability due to the aforementioned filing of federal amended returns. Therefore, Taxpayer timely filed its claim for refunds via amended Indiana corporation income tax returns, and the denied refunds should be issued.

To support its protest, Taxpayer further provided additional supporting documentation including the competent authority determination from the IRS. Given the totality of the circumstances, the Department is prepared to agree that Taxpayer timely amended its returns and was entitled to the refunds.

### FINDING

Taxpayer's protest of the Department's refund denials is sustained.

July 27, 2023

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An [html](#) version of this document.