

**Supplemental Memorandum of Decision: 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 Memorandum of Decision.

**HOLDING**

Couple requested a rehearing regarding their protest of the Indiana Department of Revenue's ("Department") refund denial for the year 2016; couple were able to establish that they timely filed and were entitled to the refund.

**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 Ct. 2021); 50 U.S.C. § 4001.

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

**STATEMENT OF FACTS**

The Department previously issued a written ruling denying Taxpayers' protest. Taxpayers requested a rehearing on the matter. The Department granted their rehearing request, and a telephone hearing was held. This written decision is based upon the rehearing and additional documentation provided by Taxpayers.

**I. Individual Income Tax - Claim for Refund.**

**DISCUSSION**

As the Department noted in its prior written finding, Indiana imposes an adjusted gross income tax on all residents. [IC 6-3-2-1\(a\)](#). 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 for nonresidents.

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[.]

To reiterate the Department's previous finding: refund claims are governed by [IC 6-8.1-9-1](#). That statute states in pertinent part that if "a person has paid more tax than the person determines is legally due for a particular taxable period" then 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."

The Department's previous written ruling denied the protest for failure to sufficiently develop the protest's argument. The Department noted in that prior finding:

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).

As part of their rehearing, Taxpayers provided a written explanation of their protest along with various exhibits. This ruling turns to Taxpayers' explanation and documentation.

In their written brief, Taxpayers explain their facts as follows (for confidentiality reasons, Taxpayers will be referred to as Taxpayer A and Taxpayer B, respectively). They are a married couple and both are in the military. Taxpayer A states:

Indiana is my official "Home of Record" for military purposes. I joined the [military] in June of 2012, and while I have never physically been located in Indiana during my military career, all of my earned income is taxed under Indiana State. I married [Taxpayer B] in March of 2014. [Taxpayer B] joined the [military] in June of 2012, and her official "Home of Record" for military purposes is Nevada. All [Taxpayer B's] earned income is taxed under Nevada.

Further, Taxpayer A states:

In April of 2017, I filed an Indiana return for tax year 2016 using a Form IT-40 after receiving tax preparation services from [military] Legal Assistance. My spouse, [Taxpayer B], and I filed a joint federal return. Because I am a military servicemember who is a full-year Indiana resident, my spouse is a legal resident of another state, and we filed a joint federal return, we should have filed a Form IT-40 PNR.

Taxpayers state that the Department, on September 23, 2019, issued a proposed assessment for liability for the 2016 tax period. Taxpayers state that prior to the Department's "letter, and even into 2021, we were unaware that the incorrect form had been used to file our taxes in 2016." Taxpayers state that "[o]ver the course of the next year, we attempted to correspond with various departments within the DOR to no avail due to diminished communication ability and accessibility within the DOR resulting from the COVID-19 outbreak."

Regarding the first issue, namely being barred by [IC 6-8.1-9-1](#), Taxpayers argue, in pertinent part, that the "statute of limitations has not run" because their "request for refund was filed April of 2017" and also that "assuming the initial filing was erroneous, [Taxpayers] filed an amended return within the three years of the assessed tax liability[.]" Taxpayers state, "[i]n April 2017, we filed a return for tax year 2016. Under [IC 6-8.1-9-1](#) of the Indiana Code, the requirement is that claim be filed within the three years of the due date of the return. That requirement has been met as evidenced by enclose (6)." The enclosure referenced is their 2016 IT-40 Indiana Full-Year Resident Individual Income Tax Return for Taxpayer A.

Additionally, Taxpayers state:

As evidenced by enclosure (12) [the Department's satisfaction of lien for a tax warrant], there was a tax warrant for the assessed liability. That tax warrant was paid in full as of June 30, 2021. The initial liability was assessed in 2019, per enclosure (8) [i.e., the Department's Notice of Proposed Assessment from 9/23/2019]. As such, at some point between September of 2019 and June of 2021, we paid the amount that was assessed by the DOR. When we filed our amended return in October of 2021 and our protest in February of 2022, both of those requests were within the three years of payment.

A review of the Department's system(s) (the Department was transitioning to a new system during the years discussed in this protest) shows that Taxpayers did indeed make payments within the three-year time frame found in [IC 6-8.1-9-1](#). Thus, having met the burden for the initial issue of timeliness, the Department now examines the substantive question.

Taxpayers' argument in summary is that Taxpayer B's income "is non-taxable in Indiana due to Nevada being the legal residency" of Taxpayer B. As Taxpayers specifically explain:

[Taxpayer B] is a nonresident who has never earned income within Indiana nor derived from Indiana. Enclosures (4) and (5) show that [Taxpayer B's] home of record is Nevada. As such, her adjusted gross income is taxable in Nevada. She has never lived in Indiana and during the tax year 2016, she lived and

worked in [another state]. As such, her income was not taxable in Indiana.

Federal law, at 50 U.S.C. § 4001, states in relevant part:

**(a) Residence or domicile**

**(1) In general**

A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

**(2) Spouses**

A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders.

And further:

**(c) Income of a military spouse**

Income for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.

50 U.S.C. § 4001.

Taxpayers provided documentation, such as Taxpayer B's "Appointment Acceptance and Record" from the military, showing that Taxpayer B's "Home of Record" is Nevada.

The Department's December 20, 2021, denial letter is based upon the refund claim not being filed timely. This written ruling finds that Taxpayers were timely in their filing. Additionally, Taxpayers have established that they are entitled to the refund.

**FINDING**

Taxpayer's protest is sustained.

August 7, 2023

*Finding Replaces: New*

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