

Final Order Denying Refund: 02-20231695
Corporate Income Tax
For the Year 2017

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

S Corporation was not entitled to the claimed \$2,600 refund because it failed to demonstrate that it timely filed its refund claim.

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](#).

S Corporation argued that it was entitled to the claimed \$2,600 refund because the statute of limitations was not applicable.

STATEMENT OF FACTS

Taxpayer is an S Corporation and a corporate partner of an Indiana limited liability company. The Indiana limited liability company elected to be treated as a partnership for income tax purposes (the "Partnership").

In February 2023, Taxpayer amended its 2017 Indiana S Corporation Income Tax Return and requested an approximately \$2,600 refund. The Indiana Department of Revenue ("Department") reviewed and denied Taxpayer's refund because Taxpayer's refund claim was not timely.

Taxpayer protested the refund denial. Taxpayer requested that the Department make the final determination without a hearing based on the supporting documentation submitted. This Final Order Denying Refund results.

I. Corporate Income Tax - Timeliness.

DISCUSSION

The Department reviewed and denied Taxpayer's refund claim because the claim was not timely. The Department explained in a letter, in relevant 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 for a refund were filed outside of the time frame and thus must be denied for the following filing period: December 31, 2017.

Taxpayer protested the refund denial, arguing that the "3-year statute of limitations does not apply to fraudulently prepared tax returns."

The issue, therefore, is whether Taxpayer sufficiently demonstrated that it was entitled to the refund and the Department erred in denying that refund. 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\(a\)](#) (applicable to the tax year at issue) states 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. Except as provided in subsections (j), (k) and (l), **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.

(Emphasis added).

[IC 6-8.1-9-1\(j\)](#), together with [IC 6-3-4-6\(c\)](#) and (d), provide circumstances and requirements which permit a taxpayer to claim a refund within one hundred eighty (180) days after the date of a modification by the Internal Revenue Service ("IRS") or a final determination, which "(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."

Accordingly, when a taxpayer determines that it overpaid income tax, the taxpayer must timely file an Indiana income tax return or timely amend its income tax returns, 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 the three-year statute of limitations from either the due date of the return or the date of payment. [IC 6-8.1-9-1\(a\)](#); [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 the overpayment is a result of a modification by the Internal Revenue Service ("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. See also [IC 6-8.1-5-2](#). When the claim is attributable to a final determination, it must be "final and conclusive" and "cannot be reopened or appealed by a taxpayer or the Internal Revenue Service as a matter of law."

In this instance, Taxpayer amended its 2017 Indiana S Corporation Income Tax Return to claim an approximately \$2,600 refund in February 2023. Taxpayer asserted that it was entitled to the refund because the "3-year statute of limitations does not apply to fraudulently prepared tax returns." Taxpayer further stated the following:

On or about [February 2023, the Partnership] filed Federal and Indiana amended tax returns for 2017 (copies attached). These returns were amended to correct fraud perpetrated by [] the general manager of [the Partnership] at that time. [The Partnership] issued an amended 2017 Form K-1 to Taxpayer correcting the fraud - a copy of this K-1 was attached to the Taxpayer's 2017 Indiana amended return. Taxpayer also included a copy of its 2017 Federal amended tax return, showing correction of the fraud.

To support its protest, Taxpayer offered an email, dated November 21, 2022, from the U.S. Department of Justice (the "Letter"), which stated in part:

I am contacting you to provide an interim case update regarding this investigative matter.

...

Although there are no substantive case updates at this time, we would like to continue to be responsive to any questions you may have regarding the federal criminal justice system and also to remind you that certain victim services are available to you should you need support or resources related to your victimization.

Upon review, the above Letter speaks for itself and includes an Investigative Case Number plus a Victim Identification Number, but it does not provide any detailed information about the case. The Letter seemingly suggests that there was an on-going investigation and Taxpayer was "referred to [] as a possible victim of a federal crime." The Letter provides Taxpayer resources or services which could be helpful while the investigation is pending. Nonetheless, the Letter does not offer any finality or any conclusion to support Taxpayer's claim that

there were "fraudulently prepared tax returns" for 2017. Therefore, Taxpayer's reliance of its supporting documentation is misplaced.

It should be noted that Taxpayer, *as a possible victim of a federal crime*, is not without remedy. As mentioned earlier, Taxpayer could have provided a final determination - namely, a "final and conclusive" determination that "cannot be reopened or appealed by a taxpayer or the Internal Revenue Service as a matter of law" to support its refund claim in question. Naturally, as an alternative, if the IRS does make an adjustment to Taxpayer's 2017 filing after the issuance of this decision, Taxpayer can report that adjustment to the Department, subject to the applicable statutes of limitations.

To conclude, without IRS modification or a final determination under [IC 6-8.1-9-1\(j\)](#) and [IC 6-3-4-6](#), Taxpayer's refund claim can only be initiated under [IC 6-8.1-9-1\(a\)](#). As such, given the totality of the circumstances, in the absence of other verifiable supporting documentation, Taxpayer failed to demonstrate that it was entitled to the refund, which was beyond the three-year statute of limitations.

FINDING

Taxpayer's protest of the Department's refund denial is respectfully denied.

August 17, 2023

Finding Replaces: New

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