

**Final Order Denying Refund: 03-20231440**  
**Withholding Tax**  
**For the Years 2019**

**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**

Out-of-State Flooring Contractor was not entitled to a refund of withholding tax submitted on behalf of a former Indiana employee. The claim was submitted outside the three-year limitations period and Contractor's explanations were incomplete and insubstantial.

**ISSUE**

**I. Withholding Tax - Refund Claim.**

**Authority:** [IC 6-8.1-9-1](#); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010).

Taxpayer argues that the Department erred in denying it a refund of withholding tax and that Taxpayer's particular circumstances justify granting the refund.

**STATEMENT OF FACTS**

Taxpayer is an out-of-state company in the business of providing floor coating and polishing services. During 2019, Taxpayer employed an Indiana employee on whose behalf Taxpayer's payroll provider filed for and paid withholding taxes.

According to Taxpayer, the Indiana employee left employment with the company in May of 2019. Taxpayer explains:

At this point, we were no longer paying any persons in the state of Indiana and therefore taxes should have been cancelled. We were using a payroll company [] to pay these taxes. [We] had extensive conversations with them telling them that we no longer needed this account.

Taxpayer filed a claim for a refund of the 2019 withholding tax forwarded to Indiana on behalf of the now former Indiana employer. In a letter dated January 2023, the Department denied the refund explaining as follows:

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: February 28, 2019.

Taxpayer disagreed with the Department's decision and submitted a protest to that effect. In Taxpayer's protest submission, Taxpayer asked for a "[f]inal determination without a hearing." This Final Order Denying results and is based on the information provided by Taxpayer and the Department's own records.

**I. Withholding Tax - Refund Claim.**

**DISCUSSION**

The issue is whether Taxpayer has provided information describing the circumstances which are sufficient to justify granting Taxpayer the requested refund.

The Department here notes a number of issues which are not necessarily relevant in addressing Taxpayer's protest. At the time the withholding tax was withheld on behalf of the Indiana employer, publicly available

information establishes that Taxpayer was an "investment adviser." The same source indicates that Taxpayer is now in the business of providing floor covering and floor polishing services.

Taxpayer has not provided a copy of the now disputed refund request. Taxpayer has not stated the amount of the requested refund.

Where, as here, a taxpayer is challenging the Department's decisions regarding the taxability of certain transactions, that taxpayer is required to provide documentation explaining and supporting its challenge. 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). 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 Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

As best that can be determined, Taxpayer was seeking a refund of the approximately \$150 forwarded the Department for the February 2019 withholding period. In the Department's letter denying the refund, the Department explained that the refund request was untimely because it was submitted outside the three-year limitations period.

Taxpayer argues that it was unaware of the payroll provider's actions regarding the employee's account and that it consulted with the provider in an attempt to rectify any of the errors purportedly made by that provider. In addition, Taxpayer believes that the Department failed to provide timely information regarding the employee's account.

We have no other notifications from the state of Indiana telling us that there was a refund available. It wasn't until [January 17, 2023] that we received notification that we could set up an online account to view anything that hadn't been done.

Taxpayer continues:

[We] believe part of this oversight was due to [payroll provider] continuing to file "0" claims on our behalf instead of helping us get the account cancelled.

The Department will not attempt here to resolve the conflicting issues and circumstances surrounding either Taxpayer's, provider's, or the Department's actions or lack of actions except to conclude that the documentation and explanation provided by Taxpayer is unclear. Clear or not, there is nothing on the face of the known circumstances that establishes that the Department mishandled the 2019 withholding payments or neglected to fulfill the obligations owed this Taxpayer. However, what is clear is that both the Department and Taxpayer are bound by the statute. [IC 6-8.1-9-1\(a\)](#) requires:

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), (l), (m), and (n), 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.

In the absence of other verifiable supporting documents, the Department must conclude that Taxpayer has effectively waived any claim to the \$150 because Taxpayer's explanation is "[p]oorly developed" and its argument is best and reasonably described as "non-cogent" *Scopelite*, 939 N.E.2d at 1145; *Wendt LLP*, 977 N.E.2d at 486 n.9.

## FINDING

Taxpayer's protest is respectfully denied.

August 22, 2023

*Finding Replaces: New*

Posted: 11/01/2023 by Legislative Services Agency  
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