

Final Order Denying Refund: 03-20221551
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 Final Order Denying Refund.

HOLDING

Taxpayer failed to establish that its claim for refund was timely.

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); *Medco Health Solutions, Inc. v. Indiana Dept. of State Revenue*, 9 N.E.3d 263 (Ind. Tax Ct. 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 business. 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 Final Order Denying Refund 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 Department's refund denial, with Taxpayer stating that its payment of 2017 withholding tax should be refunded.

"[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:

[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 19, 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:

From 2014 -1Q2021, I hired [Person A] at [Person A's tax service company] to do my payroll and pay my taxes for me. [Person A] managed my payments to IN Dept. of Revenue, and I relied on him to set and monitor these payments for me.

I stopped using [Person A] at the end of 1Q2021 because [Person A] retired. I hired a new accounting service in 2Q2021 to do my payroll and make my payments, giving them access to INTIME to make the payments. In October 2021, while I was working with my new accounting service, they were reviewing INTIME and found that [Person A's tax service] made an overpayment on January 30, 2018 for the filing period of December 31, 2017. In checking on this further, I discovered that this payment had been made while [Person A] was in the hospital from having back surgery, and his admin [sic] was managing his projects for him (without my knowledge or authorization).

Taxpayer further states:

I immediately requested a refund of the \$568.63 on October 8, 2021 from DOR.in. However, I did not receive a response from INTIME. As a result, I again requested a refund online on May 17, 2022 request for a refund, and then I received a refund request denial letter (attached). This letter states that a claim must be filed within 3 years of the date of payment (this equates to January 30, 2021).

Taxpayer states, without providing a date or documentation, that a refund request was made "immediately," but given that Taxpayer states the issue was discovered in "October 2021" it follows that the refund was requested either sometime in October of 2021 or thereafter. Regardless, Taxpayer concedes that the refund was requested "over 9 months from the deadline[.]"

Regarding refunds, the Indiana Tax Court stated in *Medco Health Solutions, Inc. v. Indiana Dept. of State Revenue*, 9 N.E.3d 263 (Ind. Tax Ct. 2014):

The Department has no legal method of generating a claim for refund on its own; rather, a claim for refund can only be initiated by a taxpayer pursuant to the procedure set forth in Indiana Code § 6-8.1-9-1. 45 Ind. Admin. Code 15-9-2(b) (2003). Indiana Code § 6-8.1-9-1 provides that "[i]f 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." Ind.Code § 6-8.1-9-1(a) (2003) (amended 2012) (emphasis added). "[I]n order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of ... [t]he due date of the return [or t]he date of payment." *Id.* (emphasis added). Furthermore, the claim must include certain information such as the amount of the refund to which the person is entitled, the reasons why the person is entitled to the refund, the tax period for which the overpayment is claimed, and the year and date of the overpayment. *Id.*; 45 I.A.C. 15-9-2(d). Finally, a claim for refund generally must be filed on the form prescribed by the Department. See 45 I.A.C. 15-9-2(d); *UACC Midwest, Inc. v. Indiana Dep't of State Revenue*, 629 N.E.2d 1295, 1298 (Ind. Tax Ct.1994) (explaining that although the taxpayer did not use the Department's prescribed form, its amended returns complete with explanatory statements qualified as claims for refund because they provided the Department with the information required by both Indiana Code § 6-8.1-9-1 and 45 I.A.C. 15-9-2).

Medco Health Solutions, at 266 (*emphasis* in the original; **emphasis** added).

Thus, a taxpayer who believes that it has overpaid any kind of tax must file a timely claim for refund with the Department. As explained by the Indiana Tax Court in *Medco*, the Department has no method of generating a claim for refund on its own.

After reviewing the matter, Department finds that Taxpayer has failed to establish compliance with [IC 6-8.1-9-1](#) for timely filing of the refund request. Therefore, Taxpayer's protest is denied.

FINDING

Taxpayer's protest is denied.

September 25, 2023

Finding Replaces: New

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