

Memorandum of Decision: 02-20231443
Corporate Income Tax
For the Year 2015

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

The Department agreed that a Technology Business's amended 2015 Indiana return was timely filed pursuant to the terms of a decision issued by the Department of the Treasury acting in its role as a "competent authority."

ISSUE

I. Corporate Income Tax - Competent Authority and Indiana's Statute of Limitations.

Authority: [IC 6-3-4-6](#); [IC 6-8.1-9-1](#); Competent Authority Assistance, Competent Authority Assistance | Internal Revenue Service (irs.gov).

Taxpayer argues that it is entitled to a refund of corporate income taxes because the refund was requested within the statute of limitations period.

STATEMENT OF FACTS

Taxpayer is a company in the business of providing computer-based automation equipment and services. Taxpayer operates out of facilities within and without the United States. Taxpayer routinely files for returns and pays Indiana corporate income tax because it conducts business within this state.

Taxpayer prepared and filed an amended 2015 corporate income tax return. That return was filed with the Indiana Department of Revenue ("Department") November 4, 2022. According to Taxpayer, the return was prepared for the following reasons.

The amended return was filed to include an adjustment arising from a mutual agreement to relieve double taxation entered into by the U.S. and [European Country] competent authorities under the Convention between the United States of American and the [European country] for the Avoidance of Double Taxation . .

..

Taxpayer received a closing letter from the "U.S. Advance Pricing and Mutual Agreement [] on July 25, 2022, outlining the income tax adjustment agreed to by the U.S. and [European country] competent authorities to relieve double taxation not in accordance with the Income Tax Treaty."

Taxpayer filed an amended federal income tax return for the year ending December 31, 2015, reflecting the adjustment expressed in the closing letter. Taxpayer expected that the amended return would result in a refund of approximately \$4,800.

The Department reviewed the amended return and responded in a letter dated November 2022 denying the requested refund. The letter explained:

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, 2015.

Taxpayer argues that the return was timely because the event which triggered the time in which to submit a refund was not "within three (3) years after the later of the following: [] The due date of the return. [or] the date of payment." Instead, Taxpayer points to the federal adjustment made under the authority in a decision issued by a competent authority.

In its protest submission, Taxpayer asked for a "[f]inal determination without a hearing." This MOD addresses the protest and is based on the documentation provided and on the information available in the Department's own records.

I. Corporate Income Tax - Competent Authority and Indiana's Statute of Limitations.

DISCUSSION

The only issue is whether the Taxpayer has established that the refund request was timely filed.

Indiana's statute of limitations is found at [IC 6-8.1-9-1\(a\)](#) (Effective July 1, 2021) which provides in relevant part as follows:

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.

Under the standard three-year rule, Taxpayer's refund requests were untimely. However, [IC 6-8.1-9-1\(j\)](#) provides an exception to the general rule.

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.

In addition, [IC 6-3-4-6\(c\)](#) provides in part:

If the federal modification results in a change in the taxpayer's federal or Indiana adjusted gross income, the taxpayer shall file an Indiana amended return within one hundred twenty (120) days after the modification is made if the modification was made before January 1, 2011, and *one hundred eighty (180) days* after the modification is made if the modification is made after December 31, 2010. (*Emphasis added*).

An "Advance Pricing and Mutual Agreement" entered into between the United States and a European country, standing alone, will not be treated as a modification made by the IRS. However, in Taxpayer's circumstances, the IRS ultimately modified Taxpayer's federal taxable income based on the terms of the Mutual Agreement.

The "competent authority" letter was issued by the Department of the Treasury on July 25, 2022. The IRS explains the "competent authority" process.

[I]f you are a U.S. resident for purposes of a U.S. income tax treaty, you can request assistance from the U.S. competent authority if you think that the actions of the United States, a treaty country, or both, cause or will cause double taxation or taxation otherwise inconsistent with the treaty. Competent Authority Assistance, Competent Authority Assistance | Internal Revenue Service (irs.gov) (last visited September 28, 2023).

In this case, Taxpayer filed the amended Indiana return 177 days after the date the executed Advance Pricing Agreement became effective and within 102 days of the date the U.S. Treasury issued a "closing" letter recognizing the Advanced Pricing Agreement. Both dates were well within the 180 days provided for under [IC 6-8.1-9-1\(j\)](#) and well within the 180 days provided for under [IC 6-3-4-6\(c\)](#).

Similarly, Taxpayer filed the amended 2015 return within 177 days of the date the IRS notified Taxpayer that it "reached a mutual agreement with [European country] regarding the competent authority request filed by

[Taxpayer]."

The Department agrees that the refund request set out in the amended Indiana 2015 was timely filed. The Department agrees that the Agreement constitutes a "federal modification" for the year ending December 31, 2015, and that Taxpayer timely filed the amended Indiana returns by which it sought the refund under dispute.

FINDING

Taxpayer's protest is sustained.

October 20, 2023

Finding Replaces: New

Posted: 01/03/2024 by Legislative Services Agency

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