

**Memorandum of Decision: 03-20231555**  
**Withholding Tax**  
**For the Year 2018**

**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**

Indiana Accounting Firm was entitled to a refund of withholding tax paid in excess of its tax liability because Accounting Firm's refund request was filed within three years of the date the tax was paid.

**ISSUE**

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

**Authority:** [IC 6-8.1-9-1](#); [45 IAC 15-9-2](#).

Taxpayer argues that the Department erred in denying it a refund of withholding tax.

**STATEMENT OF FACTS**

Taxpayer is an out-of-state company in the business of addressing and resolving forensic accounting and business interruption insurance issues.

Taxpayer routinely files Indiana withholding tax returns. The Department notified Taxpayer that it failed to file certain of the required returns. As a result, the Department issued withholding tax assessments based on the best information available. In response to Taxpayer's apparent failure to respond, the matter was turned over to the Department's collection agent.

Taxpayer explained what then followed.

A payment of \$20,219.56 was made from the [T]axpayer's business checking account on 12/19/2019 in response from a collection agency.

Taxpayer then determined that it paid more tax than was actually owed. According to Taxpayer, "An overpayment refund . . . was submitted on 12/19/2022 which was within three years after the date of payment."

In a letter dated December 2022, the Department denied the refund request. As explained in that letter:

The Indiana Department of Revenue (DOR) reviewed your claim for a refund and must deny it due to state law.

. . . .

[I]n 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.

Taxpayer disagreed and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest.

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

**DISCUSSION**

The only issue is whether Taxpayer has established that its refund claim was timely filed.

Although Taxpayer originally paid \$20,229.35, Taxpayer only requested a small portion of that amount recognizing that any payment it made would be applied to any withholding tax it owed, penalties that were

assessed, and fees imposed by the Department's collection agent.

Taxpayer agrees that it owes or owed withholding tax, that the penalties were appropriately imposed, and that the collection agency was entitled to get paid for the work it did.

Taxpayer's bank record established that it paid the \$20,229.35 on December 19, 2019. The Department's records recognize that the \$20,229.35 was received December 27, 2019.

The Department's records indicate that Taxpayer's refund was submitted on December 19, 2022.

[IC 6-8.1-9-1](#)(a) (effective July 1, 2021) provides:

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. (See also [45 IAC 15-9-2](#)).

Taxpayer is correct. The refund request was timely because submitted its refund request within three years of the date the \$20,229.35 was paid out of its bank account.

The Department made a mistake when it determined that the December 19, 2022, refund request was untimely.

It bears repeating that the amount Taxpayer may receive is substantially less than \$20,229.35. To the extent that the \$20,229.35 was applied to penalties, interest, or collection fees, Taxpayer has no claim to those amounts.

To the limited extent described in this Memorandum of Decision, Taxpayer's protest is sustained.

### **FINDING**

Taxpayer's protest is sustained.

October 5, 2023

*Finding Replaces: New*

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