

DEPARTMENT OF STATE REVENUE

02-20231323; 02-20231324;
02-20231325; 02-20231326.MOD**MEMORANDUM OF DECISION: 02-20231323; 02-20231324;
02-20231325; 02-20231326
Corporate Income Tax
For the Tax Years 2014, 2015, 2016, 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 Memorandum of Decision.

HOLDING

Out-of-state business demonstrated that it timely filed its refund claims.

ISSUE**I. Corporate Income Tax - Notification of Federal Modification; Timeliness.**

Authority: [IC 6-3-4-6](#); [IC 6-8.1-5-2](#); [IC 6-8.1-9-1](#); *Scopelite v. Indiana Dept. of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Indiana Dept. of State Revenue. 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); *Smith v. Indiana Dept. of State Revenue*, 122 N.E.3d 484 (Ind. Tax Ct. 2019); [45 IAC 15-9-2](#).

Out-of-state business with operations in Indiana protests that it timely amended its federal and state returns and was thus entitled to refund.

STATEMENT OF FACTS

Taxpayer is a subsidiary of a domestic corporation ("Parent") and conducts business throughout the United States, including Indiana, as well as internationally. Taxpayer filed both federal and Indiana corporate income tax returns yearly for the amount of income tax due in each respective jurisdiction. Parent is headquartered in Japan with subsidiaries operating throughout Asia, the Americas, and Europe.

In 2020, the Osaka Regional Taxation Bureau ("ORTB") requested adjustments for Taxpayer, other subsidiaries, as well as Parent for tax years 2014, 2015, 2016, and 2017. To avoid inconsistent taxation, Taxpayer requested a Mutual Agreement Procedure ("MAP") pursuant to a United States Tax Treaty ("Treaty"). Taxpayer was granted relief through said Treaty from both the Internal Revenue Service ("IRS") and ORTB. Subsequent to the agreement, Taxpayer amended its United States federal income tax returns specific to tax years 2014, 2015, 2016, and 2017.

In April 2022, Taxpayer amended both state and federal income tax returns for reported tax years 2014, 2015, 2016, and 2017, claiming that it was entitled to refund based on MAP agreement pursuant to Treaty. The Indiana Department of Revenue ("Department") denied Taxpayer's request for refund, stating the request was outside the three-year statute of limitations.

Taxpayer protested the Department's denial of refund and requested resolution with a hearing. An administrative hearing was held, and this Memorandum of Decision results. Additional facts will be provided as necessary.

I. Corporate Income Tax - Notification of Federal Modification; Timeliness.**DISCUSSION**

The Department denied Taxpayer's claim for refund on the grounds that the amended returns were not timely. The Department determined that in order to receive the refund, a claim must be filed within a period of three years after the due date of the return or date of payment, whichever is later. Taxpayer protested the Department's denial, claiming that: (1) it timely filed its amended returns for tax years 2014, 2015, 2016, and 2017, under [IC 6-3-4-6\(b\)](#); and (2) the Department erred in denying Taxpayer's refund claims, pursuant to MAP agreement between the IRS and ORTB.

The issue, therefore, is whether Taxpayer sufficiently demonstrated that it was entitled to the refunds and the Department erred in denying Taxpayer's refund claims. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dept. of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010). "[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.'" *Indiana Dep.t of State Revenue. v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). More generally, [IC 6-8.1-9-1](#)(a) affords a taxpayer a statutory right to file a claim for refund.

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). [IC 6-8.1-9-1](#)(a) states:

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 [D]epartment. Except as provided. . . in order to obtain the refund, the person must file the claim with the [D]epartment within three (3) years after the later of the following:

- (1) The due date of the return.
- (2) The date of payment.

[IC 6-8.1-9-1](#)(j) further enumerates that:

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 [D]epartment 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.

Thus, a taxpayer is permitted to file a claim for refund after a modification by the Internal Revenue Service of the taxpayer's federal taxable income, federal adjusted gross income, or federal income tax liability, and the modification results in a reduction of tax legally due. *Id.* Further, such refund requests *must be made* within one hundred eighty (180) days after the date of the modification.

[IC 6-3-4-6](#) primarily addresses "notice of modification," which is the statutorily required notice to the Department. [IC 6-3-4-6](#)(c) states, in part, a modification occurs on the date on which a:

- (1) taxpayer files an amended federal return;
- (2) final determination is made concerning an assessment of a deficiency;
- (3) final determination is made concerning a claim for refund;
- (4) taxpayer waives the restrictions on assessment and collection of all, or any part, of an underpayment of federal income tax by signing a federal Form 870, or any other Form prescribed by the Internal Revenue Services for that purpose.

Determining which federal document provides the finality required under [IC§ 6-3-4-6](#)(c) is a fact sensitive inquiry. See *Smith v. Indiana Dept. of State Revenue*, 122 N.E.3d 484, 488 (Ind. Tax Ct. 2019).

[IC 6-3-4-6](#)(d) further states:

For the purposes of subsection (c)(2) through (c)(6), a final determination means an action or decision by a taxpayer, the Internal Revenue Service (including the Appeals Division), the United State Tax Court, or any other United States federal court concerning any disputed tax issue that:

- (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.

Finally, [IC 6-3-4-6](#)(e) reaffirms that 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 180 days after the modification is made (when the modification is made after December 31, 2010).

In summary, when a taxpayer determines that it overpaid tax, the taxpayer must timely file an Indiana income tax return or timely amend its income tax return, 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 three-year statute of limitations from either the due date of the return or the date of payment. See [IC 6-8.1-9-1\(a\)](#). When the overpayment is a result of a modification by the IRS, the taxpayer must file within one hundred eighty (180) days after the date of the modification by the IRS. See [IC 6-8.1-9-1\(j\)](#); [45 IAC 15-9-2](#); see also *Medco Health Sols., Inc. v. Indiana Dept. 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.

Taxpayer, in this instance, established that it timely amended its returns to claim its refunds based on MAP, pursuant to Treaty. The IRS finalized MAP, pursuant to Treaty, on November 4, 2021. One hundred eighty days from MAP finalization was May 3, 2022. Taxpayer filed amended returns on April 28, 2022, for tax years 2014, 2015, 2016, and 2017. Taxpayer met the 180-day requirement for filing amended returns for tax years 2014, 2015, 2016, and 2017. Taxpayer's refund request was timely filed under Indiana statutes.

FINDING

Taxpayer's protest is sustained.

November 15, 2023

Finding Replaces: New

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