

**Final Order Denying Refund: 02-20231934
Corporate Income 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 Final Order Denying Refund.

HOLDING

Out-of-state Company was not entitled to the refund because it failed to demonstrate that it timely filed its refund claim.

ISSUE

I. Corporate Income Tax - Timeliness.

Authority: [IC 6-8.1-5-1](#); [IC 6-8.1-9-1](#); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Indiana Dep't of State Rev. 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); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); [45 IAC 15-9-2](#).

Out-of-state company argued that it was entitled to the refund because the statute of limitations was not applicable.

STATEMENT OF FACTS

Taxpayer is an out-of-state company and also a corporate partner of a limited liability company. The limited liability company elected to be treated as a partnership ("Partnership"). Partnership files Indiana Partnership Return (Form IT-65), including Schedule IN K-1 for each partner, and withholds income tax on distributions to its resident and nonresident partners. As a nonresident partner of Partnership, Taxpayer then files its Indiana S Corporation Income Tax Return (Form IT-20S) to report its income attributable to Indiana source and pays Indiana and local income tax accordingly. In late 2019, Taxpayer filed its corporate income tax return for the period ending December 31, 2018.

In October 2019, the Indiana Department of Revenue ("Department") issued a notice of proposed assessment, which included line-by-line adjustments, informing Taxpayer, in part, the following:

Immediate Action Required: A review of your Indiana S Corporation tax for the tax period ending **December 31, 2018**, indicates you may owe an additional [approximately \$7,000].

You must **send correspondence supporting your original return, pay the full amount assessed, or protest this assessment in writing within 60 days (by December 22, 2019)**. . . .

If you fail to act within 60 days, this tax assessment will become a tax debt and a Demand For Payment will be issued. It will continue to accrue additional interest and could convert into a tax warrant for collection action with additional fees. . . .

(Emphasis in original) (*emphasis added*).

Taxpayer did not respond to that notice on or before the December 22, 2019 due date. As such, the assessment advanced to a collection stage. In early January 2020, a demand notice for payment was issued. Taxpayer paid the assessment on January 10, 2020.

In March 2023, Taxpayer amended its 2018 Indiana S Corporation Income Tax Return to request an approximately \$43,000 refund, including the \$7,000 it paid in January 2020. The Department reviewed and denied Taxpayer's refund because Taxpayer's refund claim was not timely.

Taxpayer protested the denial. A hearing was held. This Final Order Denying Refund results.

I. Corporate Income Tax - Timeliness.

DISCUSSION

The Department reviewed and denied Taxpayer's refund claim on the grounds that the claim was not timely. The Department explained in a letter, in relevant part:

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, 2018.**

(Emphasis added).

Taxpayer contended that it was entitled to the refund and that the Department erred in denying its refund claim. The issue is whether Taxpayer sufficiently demonstrated that it was entitled to the refund and the Department erred in denying that refund. 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). The Indiana Supreme Court clearly explained that "each assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). 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 Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

As a general matter, the Department "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)(emphasis added). [IC 6-8.1-9-1](#)(a) (applicable to the tax year at issue) states 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. . . . [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.**

For purposes of this section, the due date for a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax is the end of the calendar year which contains the taxable period for which the return is filed. The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund.

(Emphasis added).

Accordingly, when a taxpayer determines that it overpaid income tax, the taxpayer must timely file an Indiana income tax return or timely amend its income tax returns, 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 the three-year statute of limitations from either the due date of the return or the date of payment. [IC 6-8.1-9-1](#)(a); [45 IAC 15-9-2](#); see also *Medco Health Sols., Inc. v. Indiana Dep't of State Revenue*, 9 N.E.3d 263, 266 (Ind. Tax Ct. 2014).

Taxpayer in this case protested the refund denial concerning the tax period ending December 31, 2018. Taxpayer asserted that it was entitled to the approximately \$43,000 refund because (1) in 2019, it timely filed its original 2018 return to claim the tax refund, (2) the Department erred in assessing additional tax in October 2019, (3) it erroneously paid that assessment in January 2020, and (4) the statute of limitations was not applicable because the Department erred in denying Taxpayer's refund in 2019. To support its protest, in addition to Partnership's return, Taxpayer offered its amended 2018 return and bank statement to document the additional payment it made in January 2020. It should be noted that Taxpayer also included documents for tax period ending December 31, 2019 to support its protest. Those documents are beyond the scope of this protest and irrelevant because "each assessment and each tax year stands alone." *Miller Brewing*, 903 N.E.2d at 69.

In this instant case, Taxpayer's refund claim for December 31, 2018, consisted of (1) a payment made on January 10, 2020, and (2) an overpayment with respect to estimated payment or tax withheld by Partnership during 2018.

Taxpayer contended that the Department erred in denying Taxpayer's refund in question, which it requested initially in 2019 and again in 2023. Taxpayer asserted that it timely filed the original return for the tax period ending December 31, 2018, and it was entitled to the refund it claimed on the original 2018 return. Taxpayer further argued that its original filing was timely; as such, the three-year statute of limitation is not applicable.

Taxpayer's reliance of its original filing in 2019, however, is misplaced. The Department, upon reviewing Taxpayer's original filing in 2019, issued a notice of proposed assessment pursuant to [IC 6-8.1-5-1\(b\)](#). Based on the best information available to the Department, Taxpayer's filing at that time was inconsistent with the Department's record. That notice of proposed assessment included line-by-line adjustments. That notice of proposed assessment explained the basis of the proposed assessment and requested Taxpayer send correspondence to support its original return or pay the full amount assessed by December 22, 2019. That notice of proposed assessment further provided Taxpayer a right to "protest [the] assessment in writing within 60 days (by December 22, 2019)" pursuant to [IC 6-8.1-5-1\(c\)](#).

Taxpayer was given several courses of action under that proposed assessment, but Taxpayer did none of them on or before the due date, December 22, 2019. If Taxpayer believed that it was entitled to a refund then, it should have responded to that notice, the Department would have reviewed the additional information, if any, and Taxpayer could have received its refund then. Instead, Taxpayer's supporting documentation demonstrated that Taxpayer paid the assessment on January 10, 2020. Therefore, the Department must decline Taxpayer's invitation to revisit that refund claim. Pursuant to [IC 6-8.1-5-1](#), that assessment became valid and any issue concerning that refund or assessment became moot when Taxpayer failed to timely contact the Department, provide additional information, or protest, especially given the fact that Taxpayer paid the full amount in January 2020.

Even if, for the purposes of argument, Taxpayer erred in paying the assessment in 2020, under [IC 6-8.1-9-1\(a\)](#), subject to applicable statutes of limitations, it could have corrected the error and claimed the refund. As stated earlier, Taxpayer may claim a refund of overpayment within three years from the due date of the return or the date of payment, whichever is later. To request the refund on tax withheld or estimated payment made in 2018, the due date of the return was the later date. Since Taxpayer's original return was filed in September 2019, Taxpayer's refund claim must be filed on or before October 17, 2022. As to the refund of Taxpayer's erroneous payment, based on Taxpayer's documentation, the date of that payment - January 10, 2020 - was the later date. As such, Taxpayer's refund claim must be filed on or before January 10, 2023. Under Indiana law, Taxpayer was required to file an amended return either before October 17, 2022, or January 10, 2023 to claim the refund, but its amended return was filed in March 2023. Therefore, Taxpayer's refund claim was not timely filed.

To conclude, in 2019, Taxpayer had several options to address its refund claim, but Taxpayer did not respond to the Department's notice. Taxpayer's inaction resulted in a notice of demand for payment and a denial of its original refund. Thus, Taxpayer was prohibited from challenging the validity of that assessment or extending the applicable statute of limitations to claim refund pursuant to applicable Indiana law. While Taxpayer could have filed another refund claim under [IC 6-8.1-9-1\(a\)](#), it failed to file the claim before October 17, 2022, or January 10, 2023. Given the totality of the circumstances, the Department is not able to agree that Taxpayer was entitled to the approximately \$43,000 refund, which was claimed beyond the three-year statute of limitations.

FINDING

Taxpayer's protest of the Department's refund denial is respectfully denied.

December 18, 2023

Replaces Finding Document at: New

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