

## **IC 6-8.1-9**

### Chapter 9. Refunds

#### **IC 6-8.1-9-1**

##### **Filing of claim; time limitation; considerations and hearing; decision; appeal**

Sec. 1. (a) 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 (f), (g), and (h), in order to obtain the refund, the person must file the claim with the department within three (3) years after the latter 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.

(b) After considering the claim and all evidence relevant to the claim, the department shall issue a decision on the claim, stating the part, if any, of the refund allowed and containing a statement of the reasons for any part of the refund that is denied. The department shall mail a copy of the decision to the person who filed the claim. If the person disagrees with a part of the decision, the person may file a protest and request a hearing with the department. The department shall mail a copy of the decision to the person who filed the protest. If the department allows the full amount of the refund claim, a warrant for the payment of the claim is sufficient notice of the decision.

(c) If the person disagrees with any part of the department's decision, the person may appeal the decision, regardless of whether or not the person protested the tax payment or whether or not the person has accepted a refund. The person must file the appeal with the tax court. The tax court does not have jurisdiction to hear a refund appeal suit, if:

- (1) the appeal is filed more than three (3) years after the date the claim for refund was filed with the department;
- (2) the appeal is filed more than ninety (90) days after the later of the date the department mails:
  - (A) the decision of denial of the claim to the person; or
  - (B) the decision made on the protest filed under subsection (b); or
- (3) the appeal is filed both before the decision is issued and before the one hundred eighty-first day after the date the person files the claim for refund with the department.

(d) The tax court shall hear the appeal de novo and without a jury, and after the hearing may order or deny any part of the appealed

refund. The court may assess the court costs in any manner that it feels is equitable. The court may enjoin the collection of any of the listed taxes under IC 33-26-6-2. The court may also allow a refund of taxes, interest, and penalties that have been paid to and collected by the department.

(e) With respect to the motor vehicle excise tax, this section applies only to penalties and interest paid on assessments of the motor vehicle excise tax. Any other overpayment of the motor vehicle excise tax is subject to IC 6-6-5.

(f) If a taxpayer's 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 later of:

- (1) the date determined under subsection (a); or
- (2) the date that is one hundred eighty (180) days after the date on which the taxpayer is notified of the modification by the Internal Revenue Service.

(g) If an agreement to extend the assessment time period is entered into under IC 6-8.1-5-2(h), the period during which a person may file a claim for a refund under subsection (a) is extended to the same date to which the assessment time period is extended.

(h) If a taxpayer's claim for a refund of gross retail or use tax is based on:

- (1) IC 6-2.5-4-5(c)(3); or
- (2) the exemption provided by IC 6-2.5-5-5.1 for electrical energy, natural or artificial gas, water, steam, and steam heat;

the person must file the claim with the department within eighteen (18) months after the date of payment.

*As added by Acts 1980, P.L. 61, SEC.1. Amended by P.L.291-1985, SEC.12; P.L.335-1989(ss), SEC.22; P.L.71-1993, SEC.25; P.L.119-1998, SEC.19; P.L.98-2004, SEC.74; P.L.2-2005, SEC.22; P.L.211-2007, SEC.42; P.L.131-2008, SEC.30; P.L.182-2009(ss), SEC.256; P.L.172-2011, SEC.89.*

### **IC 6-8.1-9-1.2**

#### **Filing fee refund**

Sec. 1.2. Notwithstanding section 1(d) of this chapter, if a taxpayer prevails in a complaint that is placed on the small claims docket under IC 33-26-5, the tax court shall order the refund of the taxpayer's filing fee under IC 33-26-9-1 from the state general fund. *As added by P.L.100-1989, SEC.1. Amended by P.L.98-2004, SEC.75.*

### **IC 6-8.1-9-2**

#### **Excess tax payments; procedure for credit or refund; pass through entities**

Sec. 2. (a) If the department finds that a person has paid more tax for a taxable year than is legally due, the department shall apply the amount of the excess against any amount of that same tax that is

assessed and is currently due. The department may then apply any remaining excess against any of the listed taxes that have been assessed against the person and that are currently due. Subject to subsection (c), if any excess remains after the department has applied the overpayment against the person's tax liabilities, the department shall either refund the amount to the person or, at the person's request, credit the amount to the person's future tax liabilities.

(b) Subject to subsection (c), if a court determines that a person has paid more tax for a taxable year than is legally due, the department shall refund the excess amount to the person.

(c) As used in this subsection, "pass through entity" means a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2), a partnership, a limited liability company, or a limited liability partnership and "pass through income" means a person's distributive share of adjusted gross income for a taxable year attributable to the person's interest in a pass through entity. This subsection applies to a person's overpayment of adjusted gross income tax for a taxable year if:

- (1) the person has filed a timely claim for refund with respect to the overpayment under IC 6-8.1-9-1;
- (2) the overpayment:
  - (A) is with respect to a taxable year beginning before January 1, 2009;
  - (B) is attributable to amounts paid to the department by:
    - (i) a nonresident shareholder, partner, or member of a pass through entity;
    - (ii) a pass through entity under IC 6-3-4-12 or IC 6-3-4-13 on behalf of a nonresident shareholder, partner, or member of the pass through entity; or
    - (iii) a pass through entity under IC 6-3-4-12 or IC 6-3-4-13 on behalf of a nonresident shareholder, partner, or member of another pass through entity; and
- (3) the overpayment arises from a determination by the department or a court that the person's pass through income is not includible in the person's adjusted gross income derived from sources within Indiana as a result of the application of IC 6-3-2-2(a)(5) and IC 6-3-2-2.2(g).

The department shall apply the overpayment to the person's liability for taxes that have been assessed and are currently due as provided in subsection (a) and apply any remaining overpayment as a credit or credits in satisfaction of the person's liability for listed taxes in taxable years beginning after December 31, 2008. If the person, including any successor to the person's interest in the overpayment, does not have sufficient liability for listed taxes against which to credit all the remaining overpayment in a taxable year beginning after December 31, 2008, and ending before January 1, 2019, the taxpayer is not entitled for any taxable year ending after December 31, 2018, to have any part of the remaining overpayment applied, refunded, or credited to the person's liability for listed taxes. If an overpayment or part of an overpayment is required to be applied as

a credit under this subsection to the person's liability for listed taxes for a taxable year beginning after December 31, 2008, and has not been determined by the department or a court to meet the conditions of subdivision (3) by the due date of the person's return for a listed tax for a taxable year beginning after December 31, 2008, the department shall refund to the person that part of the overpayment that should have been applied as a credit for such taxable year within ninety (90) days of the date that the department or a court makes the determination that the overpayment meets the conditions of subdivision (3). However, the department may establish a program to refund small overpayment amounts that do not exceed the threshold dollar value established by the department rather than crediting the amounts against tax liability accruing for a taxable year after December 31, 2008. A person that receives a refund or credit under this subsection shall file a report with the department in the form and in the schedule specified by the department that identifies under penalties of perjury the home state or other jurisdiction where the income subject to the refund or credit was reported as income attributable to that state or jurisdiction.

(d) An excess tax payment that is not refunded or credited against a current or future tax liability within ninety (90) days after the date the refund claim is filed, the date the tax payment was due, or the date the tax was paid, whichever is latest, accrues interest from the date the refund claim is filed at the rate established under IC 6-8.1-10-1 until a date, determined by the department, that does not precede by more than thirty (30) days, the date on which the refund or credit is made. As used in this subsection, "refund claim" includes an amended return that indicates an overpayment of tax.

*As added by Acts 1980, P.L.61, SEC.1. Amended by P.L.6-1987, SEC.13; P.L.92-1987, SEC.11; P.L.48-1994, SEC.2; P.L.28-1997, SEC.27; P.L.111-2006, SEC.10; P.L.182-2009(ss), SEC.257.*

### **IC 6-8.1-9-3**

#### **Gasoline, special fuel, and motor vehicle excise taxes; inapplicability**

Sec. 3. This chapter does not apply to refund claims made for gasoline taxes under IC 6-6-1.1, special fuel taxes under IC 6-6-2.5, or the motor vehicle excise tax (excluding interest and penalties) under IC 6-6-5.

*As added by Acts 1980, P.L.61, SEC.1. Amended by Acts 1981, P.L.93, SEC.10; Acts 1982, P.L.59, SEC.5; P.L.335-1989(ss), SEC.23; P.L.277-1993(ss), SEC.53; P.L.111-2006, SEC.11.*

### **IC 6-8.1-9-4**

#### **Designation of all or part of refund to be paid to nongame fund**

Sec. 4. (a) Every individual (other than a nonresident) who files an individual income tax return and who is entitled to a refund from the Indiana department of revenue because of the overpayment of income tax for a taxable year may designate on his annual state income tax return that either a specific amount or all of the refund to

which he is entitled shall be paid over to the nongame fund. In the event that the individual designates that a certain amount shall be paid over to the nongame fund and the refund to which he is entitled is less than the amount designated, such designation shall mean that all of the refund to which he is entitled shall be paid over to the nongame fund.

(b) Every husband and wife (other than nonresidents) who file a joint income tax return and who are entitled to a refund from the Indiana department of revenue because of the overpayment of income tax for a taxable year may designate on their annual state income tax return that either a specific amount or all of the refund to which they are entitled shall be paid over to the nongame fund. In the event that the husband and wife designate that a certain amount shall be paid over to the nongame fund and the refund to which they are entitled is less than the amount designated, such designation shall mean that all of the refund to which they are entitled shall be paid over to the nongame fund.

(c) The instructions for the preparation of individual income tax returns shall contain a description of the purposes of the nongame and endangered species program which is written in cooperation with the department of natural resources.

*As added by Acts 1982, P.L.66, SEC.1.*

#### **IC 6-8.1-9-7**

##### **Class actions; requisites; time limits**

Sec. 7. A class action for the refund of a tax subject to this chapter may not be maintained in any court, including the Indiana tax court, on behalf of any person who has not complied with the requirements of section 1(a) of this chapter before the certification of the class. A refund of taxes to a member of a class in a class action is subject to the time limits set forth in section 1(a) of this chapter based on the time the class member filed the required claim for refund with the department.

*As added by P.L.91-1989, SEC.2.*

#### **IC 6-8.1-9-14**

##### **Department centralized debt collection program for state agencies; fee for service; procedures; commissioner report**

Sec. 14. (a) Except as provided in subsection (n), the department shall establish, administer, and make available a centralized debt collection program for use by state agencies to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to or being collected by state agencies. The department's collection facilities shall be available for use by other state agencies only when resources are available to the department.

(b) The commissioner shall prescribe the appropriate form and manner in which collection information is to be submitted to the department.

(c) The debt must be delinquent and not subject to litigation, claim, appeal, or review under the appropriate remedies of a state

agency.

(d) The department has the authority to collect for the state or claimant agency (as defined in IC 6-8.1-9.5-1) delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or claimant agency that has a formal agreement with the department for central debt collection.

(e) The formal agreement must provide that the information provided to the department be sufficient to establish the obligation in court and to render the agreement as a legal judgment on behalf of the state. After transferring a file for collection to the department for collection, the claimant agency shall terminate all collection procedures and be available to provide assistance to the department. Upon receipt of a file for collection, the department shall comply with all applicable state and federal laws governing collection of the debt.

(f) The department may use a claimant agency's statutory authority to collect the claimant agency's delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to the claimant agency.

(g) The department's right to credit against taxes due may not be impaired by any right granted the department or other state agency under this section.

(h) The department of state revenue may charge the claimant agency a fee not to exceed fifteen percent (15%) of any funds the department collects for a claimant agency. Notwithstanding any law concerning delinquent accounts, charges, fees, loans, taxes, or other indebtedness, the fifteen percent (15%) fee shall be added to the amount due to the state or claimant agency when the collection is made.

(i) Fees collected under subsection (h) shall be retained by the department after the debt is collected for the claimant agency and are appropriated to the department for use by the department in administering this section.

(j) The department shall transfer any funds collected from a debtor to the claimant agency within thirty (30) days after the end of the month in which the funds were collected.

(k) When a claimant agency requests collection by the department, the claimant agency shall provide the department with:

- (1) the full name;
- (2) the Social Security number or federal identification number, or both;
- (3) the last known mailing address; and
- (4) additional information that the department may request;

concerning the debtor.

(l) The department shall establish a minimum amount that the department will attempt to collect for the claimant agency.

(m) The commissioner shall report, not later than March 1 for the previous calendar year, to the governor, the budget director, and the legislative council concerning the implementation of the centralized debt collection program, the number of debts, the dollar amounts of

debts collected, and an estimate of the future costs and benefits that may be associated with the collection program. A report to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

(n) The department may not assess a fee to a state agency or a custodial parent for seeking a setoff to a state or federal income tax refund for past due child support.

*As added by P.L.178-2002, SEC.73. Amended by P.L.28-2004, SEC.67; P.L.103-2007, SEC.3.*