TAX POLICY DIRECTIVE #1

SEPTEMBER 2010

(Replaces Directive #1 dated August 1991)

PURPOSE: Tax policy directives are intended to provide the general public with information concerning the Department's official position in regard to a specific issue. These directives may be relied upon by taxpayers until superseded by another policy directive, a change in statute or regulation, or a court decision that would render the policy directive void.

SUBJECT: Statutes of Limitations for Filing Claims for Refund and for Assessing Taxes

REFERENCE: IC 6-8.1-5-2; IC 6-8.1-9-1

INTRODUCTION

The purpose of this tax policy directive is to provide the department's interpretation of IC 6-8.1-5-2 ("Time limitation on issuance of proposed assessment; extension; erroneous refunds") and IC 6-8.1-9-1(a) ("Filing of claim; time limitation").

IC 6-8.1-5-2 provides in pertinent part:

> (a) Except as otherwise provided in this section, the department may not issue a proposed assessment under section 1 of this chapter more than three (3) years after the latest of the date the return is filed, or either of the following:
>
> (1) The due date of the return[; or]
>
> (2) In the case of 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, the end of the calendar year which contains the taxable period for which the return is filed.
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> (b) If a person files a utility receipts tax return (IC 6-2.3), an adjusted gross income tax (IC 6-3), supplemental net income tax (IC 6-3-8) (repealed), county adjusted gross income tax (IC 6-3.5-1.1), county option income tax (IC 6-3.5-6), or financial institutions tax (IC 6-5.5) return that understates the person's income, as that term is defined in the particular income tax law, by at least

> twenty-five percent (25%), the proposed assessment limitation is six (6) years instead of the three (3) years provided in subsection (a).
>
> . . .
>
> (g) If any part of a listed tax has been erroneously refunded by the department, the erroneous refund may be recovered through the assessment procedures established in this chapter. An assessment issued for an erroneous refund must be issued:
>
> (1) within two (2) years after making the refund; or
>
> (2) within five (5) years after making the refund if the refund was induced by fraud or misrepresentation.

IC 6-8.1-9-1(a) provides in pertinent 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. Except as provided in subsections (f) and (g), 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[; or]
>
> (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.

DISCUSSION

The statutory provisions cited above establish the due dates for tax returns that are filed on an annual basis or other than an annual basis, for purposes of calculating the period during which taxes may be assessed and claims for refunds may be filed. Excluding assessments related to erroneous refunds, a tax assessment may be made within three years after the latest of the following:

- The date the return is filed;
- The due date of the return; or
- The end of the calendar year that contains the taxable period for which the return is filed.

Likewise, a claim for refund may be filed within three years of the later of the following:

- The date the tax is paid; or
- The due date of the return.

Assessments related to erroneous refunds may be made within two years after the Department issues the refund or within five years after the Department issues the refund if the refund was induced by fraud or misrepresentation. A claim for refund must be filed with the Department within either:

- Three years after the latter of the due date of the return; or

- The date of payment.

For a tax period that ends in December for which the return is filed and/or the tax is paid after the first of January the following year, the statute runs from the latter of the two dates.

Examples:

1. A taxpayer files sales tax returns on a monthly basis. If the January through November returns for tax year 2009 are filed and the taxes are paid on time, the statute of limitations for assessing taxes and for filing a claim for refund is three years from Dec. 31, 2009.

2. For the same taxpayer in example 1, the December return would be filed in January and any tax due paid at that time. Therefore, for purposes of that return only and the amount of taxes paid with that return, the statute of limitations for assessing taxes and for filing a claim for refund for that tax period (Dec. 2009) is three years from the corresponding date in Jan. 2010.

3. The Department erroneously issues a refund based on a misrepresentation made by the taxpayer. The statute of limitations for assessing the tax related to the erroneous refund is five years from the date the Department issues the refund.

CONCLUSION

The statute of limitations for filing a claim for refund is three years from the later of the due date of the return or the date the tax is paid. The statute of limitations for assessments not related to erroneous refunds is three years after the latest of the date the return is filed, the due date of the return, or the end of the calendar year which contains the taxable period for which the return is filed. Assessments related to erroneous refunds may be made within two years after the Department issues the refund or within five years after the Department issues the refund if the refund was induced by fraud or misrepresentation.

John Eckart
Commissioner