DEPARTMENT OF STATE REVENUE

01-20170210R.ODR

Final Order Denying Refund: 01-20170210R
Income Tax
For The Tax Year 2012

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

Individual was unable to provide documentation supporting her position that she had paid excess income tax. The Department cannot refund taxes that have not been paid, therefore refund was properly denied.

ISSUE

I. Income Tax–Refund.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4; IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc*., 15 N.E.3d 579, 583 (Ind. 2014); *P/S, Inc. v. Ind. Dept. of State Revenue*, 853 N.E.2d 1051 (Ind. Tax Ct. 2006).

Taxpayer protests the denial of a claimed refund of tax.

STATEMENT OF FACTS

Taxpayer is an individual resident of Indiana. After a review of its records, in 2016 the Indiana Department of Revenue ("Department") determined that Taxpayer had not filed an Indiana individual income tax return for 2012. The Department therefore issued a proposed assessment for Indiana individual income tax, penalty, and interest for 2012. Taxpayer did not respond to the Department's proposed assessment. The Department then issued a demand notice for Indiana individual income tax, penalty, and interest for 2012. Taxpayer did not respond to the Department's notice. The Department then turned the matter over to a third-party collection agency ("Agency"), who contacted Taxpayer. Taxpayer made a payment for less than the total amount of tax, penalty, interest, and collection fees to Agency and then contacted the Department to dispute that she owed the tax. After Taxpayer filed a return for 2012, the Department accepted the return as filed and also determined that Taxpayer did not owe the originally assessed amount of base tax. Taxpayer filed a claim for refund of the amount she stated that she had paid to Agency. The Department reviewed the claim for refund and determined that Taxpayer had only paid Agency a portion of the originally assessed tax, penalty, interest, and collection fees. The Department refunded the amount verified in its records as paid by Taxpayer, minus collection fees. Taxpayer protested that she was due the remaining amount of the claimed refund. An administrative hearing was held via telephone and this Final Order Denying Refund results. Further facts will be supplied as required.

I. Income Tax–Refund.

DISCUSSION

Taxpayer protests the partial denial of a claim for refund of 2012 Indiana individual income tax. The Department denied a portion of the claim for refund on the basis that the Department's records showed that only a portion of the total amount of income tax, penalty, interest, and collection fees at issue was paid to Agency and then forwarded to the Department. Taxpayer states that she thinks she made four payments to Agency and that the Department is only giving her credit for one payment. The Department allowed time to submit verifying documentation to support Taxpayer's position. Taxpayer was unable to supply any documentation establishing that she paid any more than the Department was originally able to verify as having been paid.

The Department notes that, "[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.'" *Dept. of State Revenue v. Caterpillar, Inc*., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

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 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.
> (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.

If the Department reasonably believes that a taxpayer has not reported the proper amount of tax due, the Department shall propose an assessment of unpaid tax based on the best information available to the Department. IC § 6-8.1-5-1(b). The amount of the proposed assessment "is considered a tax payment not made by the due date" and is subject to penalties and interest. *Id.* Notice of the proposed assessment shall be sent to the taxpayer stating that it has sixty (60) days in which to pay the assessment or file a written protest. IC § 6-8.1-5-1(b) and (d). If the taxpayer does not pay the proposed assessment or file a written protest in the sixty (60) day period "[t]he department shall demand payment, as provided in IC 6-8.1-8-2(a), of any part of the proposed tax assessment, interest, and penalties . . . ." IC § 6-8.1-5-1(j). In these situations, the Department "shall make the demand for payment in the manner provided in IC 6-8.1-8-2." IC § 6-8.1-5-1(k).

IC § 6-8.1-8-2 provides that the Department must issue a demand notice for payment which grants the taxpayer a ten (10) day period of time in which to "either pay the amount demanded or show reasonable cause for not paying the amount demanded." IC § 6-8.1-8-2(a). If a taxpayer "does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs," and other fees. IC § 6-8.1-8-2(b). When it has issued a tax warrant, the Department may contract with a collection agency to collect delinquent tax plus interest, penalties, collection fees, and other fees and costs. IC § 6-8.1-8-4(a). Additionally, "a collection fee of ten percent (10 percent) of the unpaid tax is added to the total amount due." *Id.* When a tax warrant is filed, "the total amount of the tax warrant becomes a judgment against the person owing the tax." IC § 6-8.1-8-2(e).

Further, Taxpayer did not timely respond to the Department's notice of proposed assessment and demand notice. In *P/S, Inc. v. Ind. Dept. of State Revenue*, the Indiana Tax Court concluded that the taxpayer was responsible for paying collection fees because it had not rebutted the presumption that it received the notices which the Department mailed. *P/S, Inc. v. Ind. Dept. of State Revenue*, 853 N.E.2d 1051, 1054-55 (Ind. Tax Ct. 2006). The court ruled, "when an administrative agency sends notice through the regular course of mail, a presumption arises that such notice is received." *Id.* at 1054.

In this case, the Department followed all of the above-listed steps leading up to employing Agency. In the course of the refund claim process and the administrative protest process, the Department gave Taxpayer multiple opportunities to supply documentation establishing that she paid the total amount listed in the refund claim. Taxpayer was unable to provide any documentation which established that she paid more than the Department's records showed as paid. Without documentation supporting Taxpayer's position that she paid more than has already been refunded, the Department cannot agree with Taxpayer's protest. Nothing in the Department's records, Agency's records, or in Taxpayer's records shows any additional payments other than the single payment which has already been refunded minus collection fees as supported by the decision in *P/S, Inc*. Therefore, the Department is unable to refund payments which were never made.

FINDING

Taxpayer's protest is denied.

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