

Letter of Findings: 02-20210029
Indiana Corporate Income Tax
For the Year 2016

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department erred when it determined that out-of-state Service Provider's refund request was untimely filed; to the extent that the Department found that the refund request was filed outside the three-year statute of limitations, Service Provider's protest was sustained.

ISSUE

I. Indiana Corporate Income Tax - Statute of Limitations.

Authority: IC § 6-8.1-1-4; IC § 6-8.1-6-1; IC § 6-8.1-9-1; IC § 6-8.1-6-1; I.R.C. § 6081; [45 IAC 15-9-2](#).

Taxpayer argues that the Department erred when it denied Taxpayer's refund request on the ground that the refund request was filed outside of the three-year statute of limitations.

STATEMENT OF FACTS

Taxpayer is company in the business of personalized shopping. Taxpayer is headquartered outside Indiana but has employees in numerous states.

Taxpayer submitted a "Claim for Refund" (GA-110L) seeking a refund of approximately 1 million dollars. The GA-110L was dated May 15, 2020. The request explained that Taxpayer's sales factor was revised to exclude "amounts incorrectly 'thrown back' in the sales factor numerator under Indiana Code Sec. 6-3-3-2(e)."

The Indiana Department of Revenue ("Department") reviewed the request and responded in a letter issued June 24, 2020. The letter explained as follows:

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 refund [were] filed outside that time frame and must be denied for the following period: July 31, 2016.

Taxpayer disagreed that the refund request was untimely and submitted a protest to that effect. Taxpayer's representative waived Taxpayer's right to an administrative hearing and asked that a decision be made based upon the documentation provided along with the protest submission. This Letter of Findings results.

I. Indiana Corporate Income Tax - Statute of Limitations.

DISCUSSION

The one and only issue addressed in this Letter of Findings is whether Taxpayer has established that the Department was wrong when it found that Taxpayer's refund request was submitted outside the three-year statute of limitations.

In general, if any taxpayer believes that he or she has overpaid the tax, the taxpayer is required to timely file a claim for a refund with the Department. Specifically, IC § 6-8.1-9-1(a), in relevant part, 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 (j) and (k), in

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).**

Additionally, "[i]f the Internal Revenue Service allows a person an extension on the person's federal income tax return, the corresponding due dates for the person's Indiana income tax returns are automatically extended for the same period as the federal extension, plus thirty (30) days." IC § 6-8.1-6-1(c)(1).

[45 IAC 15-9-2](#) further explains, in relevant part, that:

(b) 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](#).

...

- (d) When filing a claim for refund with the department the taxpayer's claim shall set forth:
- (1) the amount of refund claimed;
 - (2) a sufficiently detailed explanation of the basis of the claim such that the department may determine its correctness;
 - (3) the tax period for which the overpayment is claimed; and
 - (4) the year and date the overpayment was made.

The claim for refund shall be filed on a form prescribed by the department. **(Emphasis added).**

Thus, when a taxpayer determines he or she overpaid tax - for example in a situation such as that explained by Taxpayer - the taxpayer must timely file the refund claim stating the overpayment as prescribed by the Department in order to claim that refund. IC § 6-8.1-9-1(a); [45 IAC 15-9-2](#). The taxpayer also must clearly state "the amount of the refund," "detailed explanation of the basis of the claim such that the department may determine its correctness," "the tax period for which the overpayment is claimed," and "the year and date of the overpayment." [45 IAC 15-9-2\(d\)](#).

Taxpayer states that it filed the refund claim May 15, 2020, for the tax period ending July 30, 2016. Taxpayer explains that the "extended due date for the return was May 15, 2017." The exact period of time between those dates is 1,096 days or 3 years (excluding the end date).

The federal provision setting out the "extended due date" for C-Corporations is found at I.R.C. § 6081 (effective 2015). In other words, Taxpayer's federal return was due on October 15, 2016 (ignoring weekends). Presuming that Taxpayer filed a valid I.R.S. Form 7004, the federal due date - pursuant to I.R.C. § 6081 - became April 15, 2017 (also ignoring weekends). Since IC § 6-8.1-6-1(b) allows an additional 30 days from the federal due date, the Indiana due date was 30 days after April 15, 2017, which was May 15, 2017.

The Department apparently considered the date the return is actually *filed*, as constituting the "due date." In this case, although IC § 6-8.1-6-1(b) calculated a "due date" of May 15, 2017, the Department systemically treated the date on which Taxpayer's return was actually received, May 8, 2017, as the "due date." The Department is incorrect. IC § 6-8.1-1-4 plainly provides:

"Due date" means the last date on which a particular act, such as filing a return or making a payment, may be performed and still be on time. *If an extension of time is allowed for performing a particular act, the "due date" is the last day of the extension period. (Emphasis added).*

As to whether Taxpayer's refund request was or was not timely, the May 8, 2017, date is entirely irrelevant. The extended due date was May 15, 2017, and any determination to the contrary is wrong.

Taxpayer has provided documentation establishing that the refund request was submitted on or before the

three-year statute of limitations expired on May 15, 2020, as set by the initial May 15, 2017 due date.

Taxpayer was correct in arguing that the refund request was timely filed. On the sole issue of the timeliness of the request, Taxpayer's protest is sustained.

FINDING

To the limited extent described in this Letter of Findings, Taxpayer's protest is sustained.

April 14, 2021

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