

Final Order Denying Refund: 01-20210062R
Indiana Individual Income Tax
For the Year 2016

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

The Department was precluded by Indiana law from granting Indiana Individuals a refund of individual income tax because the refund was requested outside of the three-year statute of limitations.

ISSUE

I. Indiana Individual Income Tax - Claim for Refund - Statute of Limitations.

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

Taxpayers protests the Department's decision denying a refund of 2016 individual income tax.

STATEMENT OF FACTS

Taxpayers are individual Indiana residents who file and pay Indiana income tax. Taxpayers determined that their "prior year tax returns were incorrectly prepared for many years prior to 2016." Taxpayers concluded that they were entitled to file as "professional gamblers" and should have been doing so previously.

Taxpayers filed a 2016 Indiana Amended Individual Income Tax Return (IT-40X). On that return, Taxpayers claimed a refund of approximately \$53,000. The IT-40X was postmarked October 14, 2020.

The Indiana Department of Revenue ("Department") reviewed the return. In a letter dated December 18, 2020, the Department denied the refund explaining that the refund request was untimely. The letter stated that "[y]our claim requesting the refund was not received before the 3-year period had expired."

Taxpayers disagreed with the Department's decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayers' representative explained the basis for the protest. This Final Order Denying Refund ("ODR") results.

I. Indiana Individual Income Tax - Claim for Refund - Statute of Limitations.

DISCUSSION

The issue is whether Taxpayers have provided extenuating circumstances sufficient to justify the Department granting the refund despite the fact that the request was untimely.

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 Taxpayers - the taxpayer must timely file his or her income tax return stating the overpayment as prescribed by the Department in order to claim a 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\(d\)](#).

In this instance, upon initial review of Taxpayer's 2016 filing, the Department denied Taxpayer's refund claim. The Department, in its denial letter, explained in part, that the refund claim in question was not timely pursuant to IC § 6-8.1-9-1(a). Specifically, the Department explained:

Indiana Code [§] 6-8.1-9-1(a) requires that a claim for refund of excess withholding or estimated payments must be filed within a 3-year period in order to be refunded excess withholding or estimated payments. **This 3-year period generally begins on the due date of the tax return that should have been filed for the period in question.** Your claim requesting the refund was not received before the 3-year period had expired. Therefore, your claim . . . has been denied. **(Emphasis added).**

Nonetheless, Taxpayers argue that there are extenuating - if not unprecedented - reasons for the delay in filing the IT-40X. Because Taxpayer were basing their claim on the premise that they were entitled to file as "professional gamblers," they were required to assemble and provide additional documentation sufficient to justify their claim that they were indeed "professional gamblers." As explained by Taxpayers in their protest letter:

The Covid-19 pandemic had just started as we began working on filing the amended 2016 U.S. and Indiana state income tax returns. Substantial information was needed from the various gambling facilities which were either closed or had limited resources to provide the information in a timely manner. As a result, by the time we obtained adequate information to accurately prepare Schedule C of U.S. Form 1040 and the US and Individual amended returns it was past the 3-year filing period.

At the outset, it is important to note that this ODR does not address the issue of whether Taxpayers qualify to file and report their income as "professional gamblers." The only question is whether or not the IT-40X, requesting the \$53,000 refund, was timely filed.

There is no dispute that the amended return was postmarked October 14, 2020, and that a refund claim must be filed within three years of either the due date of the original return or the date the tax was originally paid. The original 2016 return was due April 18, 2017. That original return was postmarked April 17, 2017 and estimated payments occurred prior to April 17. In Taxpayers' case, the amended return was filed three years, five months, and 26 days after the original return was filed.

Taxpayers make a logical and understandable argument that some latitude should be granted late-filing Indiana taxpayers. However, both the Department and Taxpayers are bound by the clear letter of the law. [45 IAC 15-9-2\(b\)](#) states in relevant part, that "[t]he 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](#)."

The only legal means of granting a refund is provided in IC § 6-8.1-9-1 which stakes out the limits of the Department's authority. In this case, and despite the extenuating circumstances, Taxpayers are asking for a refund the Department is prohibited from granting.

FINDING

Taxpayers' protest is respectfully denied.

April 6, 2021

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