

Final Order Denying Refund: 03-20210109
Withholding Tax
For the Year 2017

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

Indiana Vendor was precluded from obtaining a refund of withholding tax because the claim was submitted outside the three-year statute of limitations and because the basis for Indiana Vendor's claim was insufficiently detailed.

ISSUE

I. Withholding Tax - Refund Claim.

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

Taxpayer argues that the Department erred in denying it a refund of withholding tax.

STATEMENT OF FACTS

Taxpayer is an Indiana vendor which sells equipment to food service providers such as hotels, convention centers, and caterers.

Taxpayer has Indiana employees for whom it routinely withheld tax on the employees' behalf. The withheld tax is just as routinely remitted to the Indiana Department of Revenue ("Department").

According to Taxpayer, it overpaid the Department withholding tax by approximately \$500 during 2017. Although recognizing the error, it was unable to request a refund because, according to Taxpayer, "we could not as long [as] we were in a position with a tax liability in another period."

Taxpayer explains that it secured a loan in 2021 which enabled it to pay its outstanding tax liabilities. It paid those liabilities that same year and thereafter requested a refund of the \$500 overpayment.

The Department reviewed the request and denied the refund claim on the ground that it was submitted outside the statute of limitations. Taxpayer disagreed with the Department's decision and submitted a protest to that effect. In its protest, Taxpayer asked for a "[f]inal determination without a hearing."

This Final Order Denying Refund is based on documentation available to the Department and on Taxpayer's protest letter and explanation.

I. Withholding Tax - Refund Claim.

DISCUSSION

The issue is whether Taxpayer has established that it is entitled to a refund of excess withholding tax paid during 2017. Taxpayer explains that they were precluded from seeking the refund earlier because they had accrued unpaid tax liabilities, a problem which was not resolved until 2021. Taxpayer further explains the reason for its delay stating that "2020 was an exceptional and challenging year in turning our business around."

It is unclear from the information available which 2017 monthly payment was overpaid. The information simply indicates that Taxpayer paid the amount of monthly withholding tax indicated on the accompanying return. It is also unclear on which date in 2021 Taxpayer submitted the refund request.

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).**

[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 it overpaid tax - for example in a situation such as that explained by Taxpayer - the taxpayer must timely file the refund claim as prescribed by the Department in stating the overpayment 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\(d\)](#).

The information provided by Taxpayer is insufficient to allow the Department to issue the \$500 refund. On its face, the claim was submitted outside the three-year statute of limitations, Taxpayer has not provided a "detailed explanation of the basis of the claim," and Taxpayer has not defined "the year and date of the overpayment."

Both the Department and Taxpayer are constrained by the three-year statute of limitations and the law governing the sufficiency of refund requests.

FINDING

Taxpayer's protest is respectfully denied.

November 5, 2021

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