DEPARTMENT OF STATE REVENUE

04-20210108.ODR

Final Order Denying Refund: 04-20210108
Gross Retail (Sales) Tax
For the Tax Period November 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 determination.

HOLDING

Business was not entitled to a refund of payment made in January 2018 for the tax period November 2017. Business failed to demonstrate that it timely filed the required Form GA-110L to claim the refund.

ISSUE

I. Sales Tax - Claim for Refund - Statute of Limitations.

Authority: IC § 6-8.1-9-1; 45 IAC 15-9-2; *Medco Health Solutions, Inc. v. Indiana Dep't of State Revenue*, 9 N.E.3d 263 (Ind. Tax Ct. 2014).

Taxpayer protests the Department's refund denial of the payment it paid during 2017.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana and filing Indiana sales tax returns. Taxpayer filed a refund claim, requesting a $4,522.50 refund, which was remitted to the Indiana Department of Revenue ("Department") in January 2018 for the tax period November 2017. The Department reviewed and denied the requested refund on the ground that the refund request was untimely.

Taxpayer protested the refund denial. An administrative hearing was held. This Final Order Denying Refund results. Additional facts will be provided, as necessary.

I. Sales Tax - Claim for Refund - Statute of Limitations.

DISCUSSION

In June 2021, Taxpayer requested a refund of $4,522.50 sales tax, which was remitted in January 2018 for the tax period November 2017. The Department denied Taxpayer's refund claim on the ground that the refund claim was not timely.

In general, if a taxpayer believes that it 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 like this, the taxpayer must file a Form GA-110L, 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 *Medco Health Solutions, Inc. v. Indiana Dep't of State Revenue,* the taxpayer, Medco Health Solutions, Inc. (*"*Medco"), argued that it was entitled to a refund and requested the auditor consider its refund claim during the audit without filing any form prescribed by the Department to claim the refund. *Medco Health Solutions, Inc. v. Indiana Dep't of State Revenue*, 9 N.E.3d 263 (Ind. Tax Ct. 2014). The Indiana Tax Court ruled in favor of the Department, explaining that Medco's "request" for "refund from auditor during the audit" was not a filing of a refund claim because "a claim for refund generally must be filed on the form prescribed by the Department." *Id.* at 266. "The Department has no legal method of generating a claim for refund on its own[.]" *Id.* The court further concluded that "the Department's final determination cannot constitute a denial of a claim for refund because it only addresses Medco's protest of the Proposed Assessments, not whether the auditor ever considered that Medco overpaid any tax." *Id.*

IC § 6-8.1-9-1(b), in relevant part, further states that:

After considering the claim and all evidence relevant to the claim, the department shall issue a decision on the claim, stating the part, if any, of the refund allowed and containing a statement of the reasons for any part of the refund that is denied. The department shall mail a copy of the decision to the person who filed the claim. If the person disagrees with a part of the decision on the claim, the person may file a protest and request a hearing with the department . . . . (**Emphasis added**).

In this instance, Taxpayer requested the refund in June 2021. Upon initial review of Taxpayer's filing, the Department denied Taxpayer's refund request. The Department, in its denial letter, explained in part, that "The tax period the refund is being requested for November 2017 is out of statute; therefore, the refund is being denied" pursuant to IC § 6-8.1-9-1(a).

Taxpayer stated, in relevant part, the following:

[I]t only recently came to our attention as being available for refund. I do not recall ever being notified that the balance was on our account. Unfortunately, due to covid-19 and other specific business circumstances, the transportation industry has been understaffed while in significantly heightened demand and those of us remaining are stretched very thin. As soon as I identified this credit balance and inquired as to how to get the refund, the balance disappeared and I was told it was "out of statute" which was very confusing because under the 3 year rule, it should've been out of statute last November.

Taxpayer further offered additional documents to support its protest, including emails among its employees and an unsigned Form GA-110L prepared by its accounting manager in May 2018. Taxpayer did not reference any legal authority to support its argument that the *circumstances* - according to Taxpayer - shall stop the running of the three (3) year statute of limitations.

Upon review, Taxpayer's documents demonstrated that it was aware of an overpayment and its employees were contemplating filing a refund request in early 2018. However, Taxpayer's supporting documents cannot be verified as to whether the refund request was properly filed with the Department. In particular, the May 2018 GA-110L

was unsigned and Taxpayer's documents failed to substantiate that its employees *filed* the GA-110L in question with the Department in May 2018. As mentioned earlier, "[A] claim for refund generally must be filed on the form prescribed by the Department" because "the Department has no legal method of generating a claim for refund on its own[.]" *Medco,* at 266. Based on the information submitted, Taxpayer did not file the refund request until June 2021. Taxpayer's refund claim thus was untimely.

FINDING

Taxpayer's protest is respectfully denied.

December 6, 2021

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