

Final Order Denying Refund: 01-20211021
Indiana Individual Income Tax
For the 2009 - 2016 Tax Years

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

Individual was not entitled to additional refund of county income tax paid for tax years 2009 - 2016. Individual failed to demonstrate that he timely amended his Indiana returns (Form IT-40X) to claim the refund.

ISSUE

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

Authority: IC § 6-8.1-5-2; IC § 6-8.1-9-1; [45 IAC 15-9-2](#); [45 IAC 3.1-1-97](#); Income Tax Information Bulletin 32 (July 2008); Indianapolis Business Journal, *ZIP code confusion: where do I really live?*

Taxpayer protests the Department's refund denial of individual county income tax for the 2009 - 2016 tax years.

STATEMENT OF FACTS

In July 2009, Taxpayer moved to Indiana to work for an employer located in Marion County, Indiana. Taxpayer and his family purchased a house in Hamilton County with a mailing address - Indianapolis, IN 46256. Since then, Taxpayer and his family have resided in that home and a homestead exemption is claimed on their home. Every year, in the spring and fall, Taxpayer receives his property tax bills sent by Hamilton County, Indiana. Taxpayer pays the property tax to Hamilton County Treasurer accordingly.

For tax years 2009 - 2019, Taxpayer's employer withheld tax on wages paid to him based on Marion County tax rate. On or before the income tax filing due date of the following year, Taxpayer filed his Indiana state (and county) income tax returns based on Marion County income tax rate.

In 2021, Taxpayer filed amended income tax returns (Form IT-40X) for 2009 - 2019, requesting additional refund of \$56,640 for those years. The Indiana Department of Revenue ("Department") granted the refund for 2017 - 2019, totaling \$28,706, and denied the remaining \$27,934 pursuant to IC § 6-8.1-9-1(a).

Taxpayer protested the partial refund denial and provided additional information, including an article, to support his protest. A phone hearing was held. This Final Order Denying Refund results. Additional facts will be provided, as necessary.

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

DISCUSSION

In 2021, Taxpayer filed IT-40Xs for 2009 - 2019 requesting refunds of approximately \$56,640 county income taxes paid. Upon review, the Department granted the refunds for 2017 - 2019 and denied the remaining refunds pursuant to IC § 6-8.1-9-1(a) because they were not timely.

As a general rule, if a 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 he or she overpaid tax, for example in a situation like this, the taxpayer must amend his or her income tax returns 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, Taxpayer's protest letter states, in relevant part, the following:

I have included additional documentation showing that there was an erroneous withholding due to the confusion surrounding the zip code 46256. I never indicated to my employer that I lived in Marion County on my WH-4 Because I live in Fishers Indiana but have a 46256 zip code, both my employer and tax preparer . . . believed I lived in Marion County based upon my zip code, rather than Hamilton County for my tax due. I feel that the extremely significant overpayment that I have made since moving to Indiana in 2009 should be reconsidered due to the unfortunate circumstance surrounding the zip code confusion.

Taxpayer seemingly suggested that the three-year statute of limitations should not have run because "the unfortunate circumstance surrounding the zip code confusion." To support his argument, Taxpayer referenced IC § 6-8.1-5-2 and an article, "ZIP code confusion: where do I really live?" available <https://www.ibj.com/articles/65910-inconsistent-municipal-zip-code-boundaries-cause-confusion> (last visited January 25, 2022).

Upon review, however, Taxpayer's reliance of zip code is misplaced. In this instance, there is no dispute that Taxpayer's employer is located in Marion County, Indiana. As such, Taxpayer's employer is required to withhold tax on wages paid to Taxpayer under [45 IAC 3.1-1-97](#). The Department's Income Tax Information Bulletin 32 (July 2008), 20080827 Ind. Reg. 045080659NRA, provides a general guidance for the county income tax withholding based on county of residence and county of work.

Taxpayer's supporting documents and publicly verifiable information also demonstrated that Taxpayer purchased a home located in Hamilton County, Indiana and a homestead exemption is claimed on his Hamilton County home. Every year, Taxpayer receives the property tax bills and pays the property tax to Hamilton County Treasurer. As such, Taxpayer clearly understood that he and his family reside in Hamilton County, Indiana.

Further, each year, Taxpayer is required to file income tax return, Form IT-40, to report and to pay income tax due or claim a refund if he overpays. Page 1 of Form IT-40 specifically requires that Taxpayer complete "the 2-digit county code numbers (found on the back of Schedule CT-40) for the county where [Taxpayer] lived and worked on January 1, []" which include "County where you lived," "County where you worked," "County where your spouse lived," and "County where your spouse worked." The required information on Form IT-40 asked Taxpayer

to verify and report his county of residence and county of work "as of January 1" of that given tax year.

Line 2 of Schedule 5 to the Form IT-40 permits Taxpayer to claim the withholding tax credit for the "Indiana county tax withheld" by his employer to calculate his county income tax and complete Schedule CT-40. Thus, each year, on or before the filing due date, April 15, Taxpayer is required to verify his county residence before he files his income tax return to claim a refund of tax withheld by his employer. As such, the zip code has no bearing on filing his income tax returns for those years. Taxpayer's confusion or others' confusion about the zip code is irrelevant.

Finally, Taxpayer asserted that he was entitled to additional refunds for 2014 - 2016 under IC § 6-8.1-5-2(b), which in relevant part, states:

If a person files a return for . . . local income tax ([IC 6-3.6](#)) . . . that **understates the person's income**, as that term is defined in the particular income tax law, by at least twenty-five percent (25[percent]), the proposed assessment limitation is six (6) years instead of the three (3) years provided in subsection (a). (**Emphasis added**).

Upon review, the Department is not able to agree. Specifically, Taxpayer in this instance did not understate his income and the Department did not issue proposed assessments. As such, the above six-year statute of limitations does not apply.

In conclusion, Taxpayer's supporting documentation and publicly verifiable information demonstrated that since 2009, Taxpayer has resided in Hamilton County, Indiana and has worked in Marion County, Indiana. For any given tax year, when Taxpayer filed his return on or before the tax filing due date, April 15, he was required to verify and report the two digit numbers of his county of residence and county of work on his IT-40. Taxpayer did not do his due diligence. Thus, the Department is not able to agree that Taxpayer was entitled to additional refund for 2009 - 2016 just because Taxpayer, his employer, and his tax preparer were all confused and used the zip code of his mailing address to file the tax returns. Zip code is not the required information to report Taxpayer's county income tax. The Department correctly applied the three-year statute of limitations, as provided by IC § 6-8.1-9-1(a).

FINDING

Taxpayer's protest is respectfully denied.

January 31, 2022

Posted: 03/30/2022 by Legislative Services Agency
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