

ARTICLE 15. TAX ADMINISTRATION; GENERAL PROVISIONS

Rule 1. Definitions; Applicability

45 IAC 15-1-1 "Department" defined (Repealed)

Sec. 1. (Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA)

45 IAC 15-1-2 "Due date" defined

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-1-4; IC 6-8.1-5-2; IC 6-8.1-6-1; IC 6-8.1-9-1; IC 6-8.1-10-1

Sec. 2. "Due date" means the last date on which a particular act may be performed and 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. An extension of time for filing is authorized under IC 6-8.1-6-1 under several circumstances. However, the extension does not extend the time for payment of the tax due. If at least 90% of the tax that is reasonably expected to be due is paid by the original due date (see 45 IAC 15-6-1), the tax that remains unpaid will not accrue late payment penalties until the extension period has ended. However, the tax that remains unpaid during the extension period accrues interest from the original due date.

Therefore, the due date cannot be extended for the payment of tax, but can be extended for the filing of a return. If an extension of time is permitted for filing a return, the statute of limitations is also extended for purposes of filing a claim for refund or for the issuance of an assessment. (Department of State Revenue; 45 IAC 15-1-2; filed Oct 1, 1987, 1:30 pm: 11 IR 534)

Rule 2. Department Organization

45 IAC 15-2-1 Establishment

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-2-1

Sec. 1. The department was established for the purpose of administering, collecting and enforcing all taxes placed under its authority. (Department of State Revenue; 45 IAC 15-2-1; filed Oct 1, 1987, 1:30 pm: 11 IR 534)

Rule 3. Duties; Powers; Responsibilities

45 IAC 15-3-1 Employees; hiring; compensation; conflict of interest (Repealed)

Sec. 1. (Repealed by Department of State Revenue; filed Aug 22, 1995, 5:00 p.m.: 19 IR 6)

45 IAC 15-3-1.5 Employees; conflict of interest

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-1-3; IC 6-8.1-3-2

Sec. 1.5. (a) A former employee of the department may not act in any capacity for a person (except for the department, another state agency, or the federal government) if:

(1) it has been two (2) years or less since employment with the department was terminated; and

(2) the employee is representing the person in a matter that was pending in the department during the period of the former employee's employment.

(b) As used in subsection (a), "person" has the same meaning set forth in IC 6-8.1-1-3.

(c) As used in subsection (a), "matter" means any function placed under the authority of the department and includes, but is not limited to, the following:

(1) A tax assessment.

(2) A claim for refund.

- (3) An investigation.
- (4) A judicial proceeding.
- (5) An application.
- (6) A license.

The term does not include a proposal or consideration of legislation; a proposal, consideration, adoption, or implementation of a rule or an administrative policy of general application; or any other activity that lacks an identifiable party involved in a specific transaction before or with the department.

(d) As used in subsection (a), "pending in the department" means that the matter arose during the period of the former employee's employment. For example, the filing of a tax return (whether or not it is examined and whether or not the examination results in an assessment or refund) is a matter pending in the department. (*Department of State Revenue; 45 IAC 15-3-1.5; filed Aug 22, 1995, 5:00 p.m.: 19 IR 6*)

45 IAC 15-3-2 Rules and regulations

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-3-3; IC 6-8.1-5-1

Sec. 2. (a) The department has the authority to promulgate rules that are consistent with the statutory provisions of the listed taxes.

(b) An interpretation of the statutory provisions governing the listed taxes, made by a court of competent jurisdiction, which conflicts with rules promulgated by the department, will render that rule, or portion of a rule, null and void, and will become the official interpretation of the department, effective upon the date of issuance of the court's decision. If such decision is appealed by the department, the interpretation will become effective when such decision becomes final.

(c) As a general rule, the modification of a rule will not be applied retroactively. If a rule is later found to be inconsistent with changes in the law by statute or by decisions of a court of precedence, the rule will not protect a taxpayer in the same or subsequent years once the rule has been determined to be inconsistent with the law.

(d)(1) The department provides advice to taxpayers in many different forms. Rulings are issued to individual taxpayers based upon specific factual situations. Applications for rulings should be directed to the administrator of the particular division of tax from which the taxpayer is requesting a ruling. All relevant facts must be submitted in writing for such a determination to be made. The department will not issue a ruling based upon either an oral request or a written request from an anonymous taxpayer.

(2) As a general rule, the revocation or modification of a ruling will not be applied retroactively with respect to the taxpayer to whom the ruling was originally issued or to a taxpayer whose tax liability was directly involved in such a ruling. Under circumstances where a ruling to a taxpayer is revoked with retroactive effect, the notice to such taxpayer will set forth the grounds upon which the revocation is being made and the extreme circumstance under which revocation is being applied retroactively. This retroactive revocation is decided upon a case-by-case basis taking into account all relevant facts and circumstances. The department may exercise its discretion to retroactively rescind or modify rulings in the following extreme circumstances, which are not all inclusive:

- (A) There was a misstatement or omission of material facts.
- (B) The facts, as developed after the ruling, were materially different from the facts on which the department based its ruling.
- (C) There was a change in the applicable statute, case law or regulation.
- (D) The taxpayer directly involved in the ruling did not act in good faith.

Taxpayers are cautioned that changes in the law and final decisions of Appellate Court, Supreme Court and Indiana Tax Court cases are notification to the taxpayer of a possible revocation of a ruling, effective from the date of the court decision or change in the law within the statutory open period.

(3) In respect to rulings issued by the department, based on a particular fact situation which may affect the tax liability of the taxpayer, only the taxpayer to whom the ruling was issued is entitled to rely on it. Since the department publicizes summaries of rulings which it makes, other taxpayers with substantially identical factual situations may rely on the publicized rulings for informational purposes in preparing returns and making tax decisions. Generally, department publications may be relied on by any taxpayer if their fact situation does not vary substantially from those facts upon which the department based its publication. If a taxpayer relies on a publicized ruling and the department discovers, upon examination, that the fact situation of the particular

taxpayer is different in any material respect from that situation on which the original ruling was issued, the ruling will afford the taxpayer no protection and the examination will apply to all open years under the statutes. Letters of findings that are issued by the department, as a result of protested assessments, are to be considered rulings of the department as applied to the particular facts protested.

(e) Oral opinions or advice will not be binding upon the department. However, taxpayers may inquire as to whether or not the department will make a ruling or determination based on the facts presented by the taxpayer. If the taxpayer wishes a ruling by the department, the formal request must be in writing. A taxpayer may also orally receive technical assistance from the department in preparation of returns. However this advice is advisory only and is not binding in the latter examination of returns.

Based upon general inquiries and correspondence, the department often issues written letters of advice. Such letters are advisory in nature only and merely technical assistance tools for the taxpayer. Strictly informational type letters are not to be considered rulings by the department and will not be binding.

However, some written inquiries have asked for the tax consequences of a particular transaction, based upon the facts presented. In such instances, the department may consider such letters as rulings that may bind the department to the position stated in respect to that taxpayer only. All such rulings issued will be binding provided that all of the facts described in obtaining the ruling are true and accurate. Any misstatement of material fact or information will void the ruling.

(f) In respect to material published by the department, the general policy is that a taxpayer may rely on these publications with regard to their own business activities, regardless of the fact that the taxpayer may never have read the publications when entering into the transaction. Thus, the taxpayer need not have a specific ruling on the matter. However, the taxpayer must show that his particular fact situation complies with the guidelines of the publication.

(g) Examples are included in department publications and rules for illustrative purposes only. Such examples are often simplified to illustrate a specific point without regard to transactions or situations which would normally be related to the specific point illustrated. Accordingly, items specifically designated as examples, which are included in department rules and publications, are not to be considered as an official part of such rules and publications and cannot be relied upon by a taxpayer as illustrative of any particular situation in its entirety. (*Department of State Revenue, 45 IAC 15-3-2; filed Oct 1, 1987, 1:30 pm: 11 IR 535*)

45 IAC 15-3-3 Forms

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-3-4; IC 6-8.1-6-4

Sec. 3. (a) All returns and information required by the provisions of the listed taxes must be submitted on forms furnished by the department. Reprints and reproductions will be accepted. For purposes of 45 IAC 15-3-3 the word "reprint" represents blank forms to be used for filing purposes with the department. "Reproductions" will denote copies of completed forms to be filed with the department.

(b) Requirements:

(1) All reprints and reproductions must be facsimilies and must be on paper of substantially the same color, weight (not less than 16 lbs), size, and texture, and of a quality as good as that used on the original form.

(2) Reprints must substantially duplicate the color of ink of the official form in order to be accepted. However, reproductions resulting in black printing will be accepted.

(3) Reproductions must have a high standard of legibility, both as to original form and as to the reported information. The department reserves the right to reject any reproductions with poor legibility, to withdraw the benefits of this section from any firm or individual, and to reject any process which fails to meet these standards.

(4) No tolerance will be permitted in the image size of printed material. Any pin feed borders must be stripped off before the form is filed.

(c) Reprints and reproductions of official forms and nonstandard forms which do not meet the requirements mentioned above cannot be filed in lieu of the official forms. They may, however, be filed as supporting statements to provide details and explain entries made on the official form. Although reproduced returns may be filed, they must contain the original signatures. Reproduced signatures will not be accepted. Reprints and reproductions may be printed on one side only. If the reverse side of the original form is required, it must be firmly stapled to page one. Form W-2 and check, if applicable, should be stapled to page one only in the position designated.

(d) Reprints and reproductions of forms and schedules meeting the above conditions may be used without prior approval of the department. However, if specific approval of a reprint or reproduction of any such form or schedule is desired, a sample of the proposed reprint or reproduction should be sent to the department for consideration.

(e) The department encourages the filing of information returns on magnetic media. Procedures and specifications for magnetic media reporting are available from the department.

(f) Any machine readable form (including magnetic ink) must be submitted to the department for prior approval. (*Department of State Revenue; 45 IAC 15-3-3; filed Oct 1, 1987, 1:30 pm: 11 IR 536*)

45 IAC 15-3-4 Representation of taxpayers before the department

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-3-2; IC 6-8.1-3-8; IC 6-8.1-7; IC 6-8.1-8-4

Sec. 4. (a) There are no formal qualifications for individuals who may represent a taxpayer before the department. However, there are certain limitations concerning former department employees (see IC 6-8.1-3-2). Further, any special counsel employed by the department under IC 6-8.1-8-4 may not represent a taxpayer for whom an outstanding tax warrant has been issued by the department. Restrictions concerning the release of confidential information imposed by IC 6-8.1-7 make it mandatory that any person representing a taxpayer, or otherwise appearing or communicating with the department on a taxpayer's behalf, present a properly executed power of attorney prior to the department releasing any tax return information to the representative. No information will be released to a representative of the taxpayer out of the taxpayer's presence, unless a properly executed power of attorney has been presented. Power of attorney forms are available from the department.

Casual conversations with a taxpayer's representative who does not have a power of attorney on file are permitted. However, neither tax return information nor specific information will be disclosed.

(b) The power of attorney must contain the following information:

(1) The name, address, and taxpayer identification number of the taxpayer.

(2) The name, address, and telephone number of the taxpayer's representative or representatives. A corporation, law firm, or accounting firm must name at least one individual as the representative.

(3) The type of tax and the tax years for which the representative has been appointed.

(4) Any restrictions or limitations placed upon the representative when acting on behalf of the taxpayer.

(5) The power of attorney must be signed by the taxpayer or an individual authorized to execute a power of attorney. The department may require that the signature be notarized by a notary public if the representative is not a licensed attorney or certified public accountant.

(c) If the taxpayer executes a power of attorney the department will communicate primarily with the taxpayer's representative. Generally, a copy of any communication with the taxpayer's representative will not be sent to the taxpayer until a final determination is made on the matter pending before the department. (*Department of State Revenue; 45 IAC 15-3-4; filed Oct 1, 1987, 1:30 pm: 11 IR 536*)

45 IAC 15-3-5 Audits; investigations; subpoenas; court orders

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-3-12

Sec. 5. (a) Investigations. The department, or its authorized agents, may examine the books, records, papers, or other data bearing on the correctness of returns, including those pertinent records of third parties handling funds for the credit of, or acting as agent for, any person subject to a listed tax. This includes, but is not limited to, records maintained by banks, savings and loan associations, and credit unions.

(b) Subpoena Power. (1) The department has the power to issue subpoenas compelling the attendance of any person called upon to testify in any matter before the department. The department also has the power to compel the production of books and records.

(2) The department may subpoena records. In general, service may be made upon an individual or an individual acting in a representative capacity by:

- (A) sending a copy of the subpoena by registered or certified mail, or other public means by which a written acknowledgment of receipt may be requested and obtained, to the persons *[sic.]* residence, place of business or employment with return receipt requested and returned showing receipt of the subpoena; or
- (B) delivering a copy of the subpoena to the person; or
- (C) personally leaving a copy of the subpoena at the person's dwelling house or usual place of abode; or
- (D) serving the person's agent as provided by rule, statute or valid agreement.

Whenever service is made under subdivision (C) or (D), the department shall also send by first class mail a copy of the subpoena to the last known address of the person being served and this fact shall be shown upon the return.

(3) Service upon an organization may be made as follows:

(A) in the case of a domestic or foreign organization, upon an executive officer thereof, or if there is an agent appointed or deemed by law to have been appointed to receive service, then upon such agent; or

(B) in the case of a partnership, upon a general partner thereof.

(c) Court Petition. Any failure or refusal to cooperate with the department in reviewing and auditing records and returns, including the answering of questions, will be reported to the attorney general who may institute proceedings against the person or taxpayer who fails or refuses to cooperate. Such proceedings include the filing of a petition setting forth the circumstances and facts of the demand of the department and the refusal or failure to submit the required information.

(d) Court Order. The court, upon receiving such petition, shall issue an order to the named defendant to produce any requested evidence or testimony. Unless the defendant can show good cause for not producing such evidence or giving such testimony, the court shall order the defendant to produce evidence and offer any testimony required. (*Department of State Revenue; 45 IAC 15-3-5; filed Oct 1, 1987, 1:30 pm: 11 IR 537*)

Rule 4. Division of Audit

45 IAC 15-4-1 Powers

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-4-2

Sec. 1. The division of audit may have full and prompt access to all official state and local records and to any information from government and private sources that is useful in performing its functions. (*Department of State Revenue; 45 IAC 15-4-1; filed Oct 1, 1987, 1:30 pm: 11 IR 538*)

Rule 5. Assessment

45 IAC 15-5-1 Notice

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-5-1

Sec. 1. If the department believes that a taxpayer has improperly reported a listed tax liability, the department may at any time within the prescribed statute of limitations period issue to such taxpayer a formal notice that the department proposes to assess additional tax. The formal notice shall be based on the best information available to the department. Any written advisement which informs the taxpayer of the amount of the proposed assessment for a particular tax period shall constitute a formal notice. A formal notice shall be sent through the United States mail. (*Department of State Revenue; 45 IAC 15-5-1; filed Oct 1, 1987, 1:30 pm: 11 IR 538*)

45 IAC 15-5-2 Protests

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-5-1

Sec. 2. (a) A taxpayer has sixty (60) days from the date the notice of additional tax assessment is mailed to protest the

additional tax liability.

(b) All protests of additional assessments must be in writing and include the taxpayer's name, tax identification number, address and the basis for objections to the proposed assessment.

(c) If the taxpayer desires a hearing before the department, the protest shall so state. The taxpayer may, in lieu of a hearing, submit written objections to the assessment. Protests should be submitted to the administrator of the division which initiated the assessment.

(d) The department may correspond with the tax payer prior to the hearing, either in writing or orally, in order to gather information and clarify issues presented in the protest letter. (*Department of State Revenue; 45 IAC 15-5-2; filed Oct 1, 1987, 1:30 pm: 11 IR 538*)

45 IAC 15-5-3 Hearings

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-5-1

Sec. 3. (a) A taxpayer receiving a notice of proposed assessment shall have a right to protest the additional assessment and have a hearing of the facts and issues before a final determination is made by the department with respect to such proposed assessment.

(b) The department hearing procedures are as follows:

(1) Upon receipt of a timely protest requesting a hearing with the department, the department's file, including the taxpayer's protest, will be forwarded to the administrator of the initiating tax division or to the technical tax division.

(2) The department shall set a date for a hearing of the protest and the taxpayer will be notified of the time and place thereof.

(3) Once a hearing date has been set, extensions of time, continuances and adjournments may be granted at the discretion of the department upon a showing of good cause.

(4) If the taxpayer or its duly authorized representative (see 45 IAC 15-3-3) wishes to file legal memoranda with the department concerning the facts, issues and arguments of its protest, that material must be submitted at least five (5) days prior to the date of the hearing.

(5) In lieu of a hearing, the taxpayer may elect to have its protest resolved based upon the taxpayer's written brief or by telephone conference. If the taxpayer elects to rely on its written brief or a telephone conference, the taxpayer's right to a hearing shall be waived. In resolving the protest, the department shall consider all relevant information and evidence submitted by the taxpayer and/or available to the department.

(6) If a taxpayer or its representative fails to appear at a hearing without securing a continuance, the department will decide the issues on the best evidence available to the department.

(7) The hearing will be conducted in an informal manner. The purpose of the hearing is to clearly establish the taxpayer's specific objections to the assessment and the reasoning for these objections. The hearing is not governed by any rules of evidence. The department is expressly excluded from the requirements of the Administrative Adjudication Act.

(8) The burden of proving that a proposed assessment is incorrect rests with the taxpayer against whom the proposed assessment is made. The department's audit establishes a prima facie presumption of the validity of the audit and the taxpayer's liability.

(*Department of State Revenue; 45 IAC 15-5-3; filed Oct 1, 1987, 1:30 pm: 11 IR 538*)

45 IAC 15-5-4 Letter of findings

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-5-1

Sec. 4. (a) The protest will not be resolved at the hearing. All facts and arguments presented will be considered by the department and a decision will be rendered in writing described as a letter of findings.

(b) The letter of findings will arrive at one (1) of two (2) conclusions. The procedures relating to these conclusions are as follows:

(1) Assessment sustained in its entirety:

- (A) A letter of findings will be written setting out briefly the issues and the rationale supporting the assessment.
- (B) After review, the letter of findings and file will be forwarded to the deputy commissioner or commissioner for approval.
- (C) The file and letter of findings will then be returned to the initiating division.
- (D) The letter of findings will be mailed with a notice of tax due indicating updated interest. The original notice of tax due will be voided.

(2) Protest sustained partially or in its entirety:

- (A) A memorandum will be written, addressed to the initiating division, setting out in sufficient detail the findings of the department with respect to the proposed assessment.
- (B) After review, the proposed assessment will be adjusted by a supplemental assessment.
- (C) After review by the initiating administrator, a letter of findings will be written setting out the issues and the findings which resulted in the supplemental assessment.
- (D) The letter of findings will be forwarded to the deputy commissioner or commissioner for approval.
- (E) After signature of the deputy commissioner or commissioner, the file will be returned to the initiating division.
- (F) The letter of findings will be mailed to the taxpayer and/or the taxpayer's representative along with a revised notice of tax due consistent with the supplemental assessment. The original notice of tax due will be adjusted or cancelled.

(Department of State Revenue; 45 IAC 15-5-4; filed Oct 1, 1987, 1:30 pm: 11 IR 539)

45 IAC 15-5-5 Rehearings

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-5-1

Sec. 5. (a) After receipt of the letter of findings, the taxpayer may petition for a rehearing. Rehearings will be granted by the commissioner or deputy commissioner only under unusual circumstances. The taxpayer must allege that certain material facts or circumstances were not presented or considered in the original proceedings. Rehearings are granted at the discretion of the commissioner or deputy commissioner.

(b) If a rehearing is granted, the rehearing will not be held de novo unless abuse of discretion is alleged. When such abuse is alleged, the evidence will not be reweighed. Instead, the department will only consider evidence most favorable to the department's position and reverse only if the decision is clearly against the logic and effect of the facts and circumstances. However, if the taxpayer presents new and relevant evidence as a grounds for reversal, the new evidence will be weighed in light of all relevant facts and circumstances. *(Department of State Revenue; 45 IAC 15-5-5; filed Oct 1, 1987, 1:30 pm: 11 IR 539)*

45 IAC 15-5-6 Demand for payment

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-5-1

Sec. 6. If a taxpayer fails to properly respond within sixty (60) days to a formal notice as defined in 45 IAC 15-5-1 or fails to appear at a hearing or if the department determines that the taxpayer owes additional taxes after the protest and hearing, the department must serve notice and demand payment from the taxpayer, plus any penalty or accrued interest. *(Department of State Revenue; 45 IAC 15-5-6; filed Oct 1, 1987, 1:30 pm: 11 IR 539)*

45 IAC 15-5-7 Statute of limitations on issuance of proposed assessment

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-1-4; IC 6-8.1-5-2; IC 6-8.1-6-3

Sec. 7. (a) Except as otherwise provided in IC 6-8.1-5-2, the statute of limitations for the assessment of a listed tax liability is three (3) years from the due date of the annual return (including extensions of time granted by the department) or the date on which the annual return is filed for the tax year, whichever is later. If an extension of time is granted by the department, the statute of limitations shall begin to run on the day after the last day of the extension period.

(b) In the case where returns are filed monthly, quarterly, or semi-annually such as returns 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, the statute of limitations for an assessment is three years from the date the return was filed, or the end of the calendar year which contains the taxable period for which the return was filed, whichever is later.

(c) "Date of filing" is defined in IC 6-8.1-6-3. The due date of any listed tax is defined in IC 6-8.1-1-4.

(d) If a taxpayer files an amended return which corrects, updates or in any way changes the amount and/or method of reporting, the statute of limitations for assessment will be three (3) years from the date on which the amended return is filed. However, once the statute of limitations for the original return (the return being amended) has run, the amount the department may assess due to the amended return is limited to any amount claimed as a refund on the amended return.

EXAMPLE

Corporation Y files its 19X2 Indiana return on April 15, 19X3. However, Corporation Y does not pay the tax due until May 1, 19X3. On April 30, 19X6, Corporation Y files an amended return for 19X2 claiming a refund for certain sales in interstate commerce for gross income tax purposes. The three (3) year statute of limitations for the original 19X2 return ended on April 15, 19X6. However, the amended return extends the assessment period until April 30, 19X9. Any assessment levied after April 15, 19X6 will be limited to the amount resulting in a refund.

(e) If a taxpayer files an adjusted gross income tax, supplemental net income tax, or county adjusted gross income tax return that understates its income by at least twenty-five percent (25%), the statute of limitations for proposed assessments is increased from three (3) years to six (6) years. "Income," as used in 45 IAC 15-5-7(e), shall be defined to mean adjusted gross income for the adjusted gross income tax, supplemental net income for the supplemental net income tax and county adjusted gross income for the county adjusted gross income tax.

(f) The running of the statute of limitations for purposes of assessing unpaid taxes will not start if the taxpayer fails to file a return which is required by any listed tax provision. Also, a substantially blank, unsigned or fraudulent return will not start the running of the statute of limitations.

(1) A substantially blank return is one which does not furnish all the information necessary to determine a taxpayer's liability for the tax in question. In order for a return to be complete enough to determine the taxpayer's liability, the information does not have to be correct. Any denotation by the taxpayer which clearly indicates a positive denial of liability for any tax listed on the tax form shall constitute a completed return. Thus, a return which has "zero," "-0-" or "none" written on a given line is not substantially blank. Also, if a taxpayer makes a positive indication of liability on a line which constitutes a total of one or more taxes, a return is deemed to be completed for all such taxes even if the particular line for the tax(es) is left blank.

(2) An unsigned return is one which does not have the original hand written signature of the individual taxpayer or corporate officer or their authorized designee. The return also must be dated.

(3) A person who files a return which makes a false representation(s) with knowledge or reckless ignorance of the falsity will be deemed to have filed a fraudulent return. There are five elements to fraud.

(A) Misrepresentation of a material fact: A person must truthfully and correctly report all information required by the Indiana Code and the department's regulations. Any failure to correctly report such information is a misrepresentation of a material fact. Failure to file a return may be a misrepresentation.

(B) Scienter: This is a legal term meaning guilty knowledge or previous knowledge of a state of facts, such as evasion of tax, which it was a person's duty to guard against. A person must have actual knowledge of the responsibility of reporting the information under contention. However, the reckless making of statements without regard to their truth or falsity may serve as an imputation of scienter for purpose of proving fraud.

(C) Deception: Deception operates on the mind of the victim of the fraud. If a person's actions or failure to act causes the department to believe a given set of facts which are not true, the person has deceived the department.

(D) Reliance: Reliance also concerns the state of mind of the victim and is generally considered along with deception. If the person's actions, failure to act, or misrepresentations cause the department to rely on these acts to the detriment or injury of the department, the reliance requirement of fraud will be met.

(E) Injury: The fraud instituted upon the department must cause an injury. This can be satisfied simply by the fact that the misrepresentation(s) caused the department not to have collected the money which properly belongs to the state of Indiana.

In order to demonstrate fraud, the department is required to prove all of the above elements are present. This must be shown by clear and convincing evidence. (*Department of State Revenue; 45 IAC 15-5-7; filed Oct 1, 1987, 1:30 pm: 11 IR 539*)

45 IAC 15-5-8 Jeopardy assessments

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-5-3

Sec. 8. (a) The department may declare the taxable period of a taxpayer terminated and demand immediate payment of the tax due under any one of the following circumstances:

(1) the department finds that the taxpayer intends to remove itself from the state or intends to remove its property from the state; or

(2) the department finds that the taxpayer is concealing its location or its property; or

(3) the taxpayer does any other act tending to prejudice or render wholly or partly ineffective proceedings to compute, assess, or collect any tax levied by the state.

(b) The assessment for taxes owing shall be made to on the best information available to the department. No notice for payment is required for an assessment under IC 6-8.1-5-3. Instead, payment shall be due immediately upon assessment by the department.

(c) If the taxpayer believes that it does not owe some or all of the amount assessed by the department under IC 6-8.1-5-3, it may protest within twenty (20) days after the assessment is made. The taxpayer may request a hearing, whereupon the department may hold a hearing in conformity with the provisions of 45 IAC 15-5-3.

(d) If payment of the amount assessed by the department is not made immediately, the department may issue a jeopardy tax warrant against the taxpayer. The taxpayer's request for a hearing will not stay the issuance of the jeopardy tax warrant. Only the full payment of the assessment will prevent the issuance of the jeopardy tax warrant.

(e) The department has full power to issue, serve, levy and collect a jeopardy tax warrant. The department may, at its discretion, request the assistance of the state police department or the sheriff of any county in effectuating the jeopardy tax warrant.

(f) The department may, at its discretion, accept a surety bond for the full amount of the jeopardy tax warrant in lieu of the levy and sale of the taxpayer's property. (*Department of State Revenue; 45 IAC 15-5-8; filed Oct 1, 1987, 1:30 pm: 11 IR 541*)

Rule 6. Filing and Due Dates

45 IAC 15-6-1 Extensions

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-5-2; IC 6-8.1-6-1

Sec. 1. (a) The department shall grant a taxpayer an extension for filing a tax return if:

(1) the taxpayer petitions the department before the original tax due date or obtains an automatic extension pursuant to IC 6-8.1-5-2(e); and

(2) the taxpayer includes a payment of at least ninety percent (90%) of the tax reasonably expected to be due on the due date or at least one hundred percent (100%) of the immediate prior year total tax liability.

(b) For subdivision (2) above, the amount of tax "reasonably expected" to be due is defined as ninety percent (90%) of the ultimate tax due. Thus, the department shall determine if the taxpayer's payment was reasonable by using the final amount of tax owed for the tax year.

(c) An extension to file a tax return is in no manner to be construed as an extension for the due date of payment of a taxpayer's liability for a tax year.

(d) A proper extension to file a tax return will only have the effect of foregoing the penalties imposed for failure to pay a listed tax. The taxpayer will still be liable for the statutory interest for any tax that remains unpaid during an extension period. (*Department of State Revenue; 45 IAC 15-6-1; filed Oct 1, 1987, 1:30 pm: 11 IR 541*)

45 IAC 15-6-2 Holidays

Authority: IC 6-8.1-3-3

Affected: IC 1-1-9-1; IC 6

Sec. 2. Any act which is required to be performed under the provisions of IC 6 of the Indiana Code pertaining to any listed tax may be performed on the succeeding business day if the due date falls on any state holiday listed in IC 1-1-9-1, any other national legal holiday, or a Saturday or Sunday. (*Department of State Revenue; 45 IAC 15-6-2; filed Oct 1, 1987, 1:30 pm: 11 IR 541*)

45 IAC 15-6-3 Date of filing

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-6-3

Sec. 3. (a) If a document which is required to be filed with the department by a prescribed date is mailed through the United States mail, the date displayed on the post office cancellation mark establishes an irrebuttable presumption that the displayed date was the date on which the document was filed. If a document is delivered to the department in any other manner than the United States mail, the department shall stamp the document in such a fashion as to display the date the document is received. This date stamped by the department shall establish an irrebuttable presumption as to the date the document is received.

(b) If a document is sent through the United States mail by registered mail, certified mail or certificate of mailing, then such date of registration, certification or certificate shall be conclusive as to the date of filing. Such date as authenticated by the United States post office records shall be conclusive even in the case of a conflicting postmark date.

(c) If a document mailed through the United States mail is physically received after the due date without a legibly correct postmark, the person who mailed the document may show the document was mailed on or before the due date by reasonable evidence. Examples of such evidence include, but are not limited to, the following:

- (1) Testimony of the party.
- (2) Testimony of disinterested third parties.
- (3) Evidence and/or testimony from the United States post office.
- (4) Any other evidence which tends to establish the date of filing.

(d) If a document is mailed to, but never received by the department, the person sending the document may produce reasonable evidence to show that the document was mailed on or before the due date. Such evidence as used to show the correct postmark date in 45 IAC 14-6-3(c) [*subsection (c)*] may also be used to establish the mailing of a document. In addition to showing that the document was deposited in the United States mail on or before the due date, the person must file a duplicate document with the department within thirty (30) days from the date the department sends the person notice that the prescribed documents were not received. (*Department of State Revenue; 45 IAC 15-6-3; filed Oct 1, 1987, 1:30 pm: 11 IR 541*)

Rule 7. Confidentiality

45 IAC 15-7-1 Disclosure of information

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-7-1

Sec. 1. (a) Before a judicial order will be considered sufficient for the department to disclose information, the order must be an official court document signed by a presiding judge.

(b) Employees of the department may reveal and discuss information included on a tax return with:

- (1) The taxpayer, when identification has been produced to insure the fact that the individual is the taxpayer who filed the return.
- (2) The taxpayer's representative who provides a properly executed power of attorney from the taxpayer. See 45 IAC 15-3-3.
- (3) Another department employee when the information is being discussed for tax compliance or collection purposes.
- (4) The public concerning the disclosure of certain information submitted by not-for-profit organizations as allowed under

IC 6-2.1-8-4.

(Department of State Revenue; 45 IAC 15-7-1; filed Oct 1, 1987, 1:30 pm: 11 IR 542)

45 IAC 15-7-2 Individual filing returns; disclosure of information

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-7-2

Sec. 2. At a person's request, the department may disclose whether or not an individual filed an Indiana income tax return. Such disclosure may not be made with respect to any taxable year until the close of the calendar year following the year in which the return should have been filed. No other information derived from or concerning the individual's return may be disclosed.

EXAMPLE

Disclosure of information that a taxpayer filed a 19X1 individual income tax return could not be revealed until January, 19X4. Such information cannot be made until the close of the calendar year following the year in which the return should have been filed.

(Department of State Revenue; 45 IAC 15-7-2; filed Oct 1, 1987, 1:30 pm: 11 IR 542)

Rule 8. Collection

45 IAC 15-8-1 Partial payments

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-8-1.5; IC 6-8.1-8-2

Sec. 1. (a) If a taxpayer makes a partial payment of the taxpayer's tax liability, the payment shall only be applied first against the penalty, second the interest and third the principal liability of the particular billing for a given year and tax.

EXAMPLE

A taxpayer has outstanding tax liabilities for both income and sales tax for years 19X1, 19X2 and 19X3. If the taxpayer makes a partial payment for the outstanding income tax liability, the payment will first be applied to the penalty, interest and principal liability for income tax in 19X1. If any payment remains, it will be applied in the prescribed order for 19X2 and 19X3.

(Department of State Revenue; 45 IAC 15-8-1; filed Oct 1, 1987, 1:30 pm: 11 IR 542)

45 IAC 15-8-2 Demand notices; tax warrants

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-8-1.5; IC 6-8.1-8-2

Sec. 2. Any money received by the department pursuant to a demand notice or tax warrant shall be applied to the outstanding tax liability of the taxpayer in the manner provided by IC 6-8.1-8-1.5. In this case, the tax liability of the taxpayer shall include any collection fee, sheriff's costs, clerk's costs, and damages. *(Department of State Revenue; 45 IAC 15-8-2; filed Oct 1, 1987, 1:30 pm: 11 IR 542)*

Rule 9. Refunds

45 IAC 15-9-1 Due date; net operating loss

Authority: IC 6-8.1-3-3

Affected: IC 6-3-1-3.5; IC 6-8.1-5-2; IC 6-8.1-9-1

Sec. 1. (a) In determining the time limitations within which a person may file a claim for refund, the due date of the return shall include extensions of the due date as provided under IC 6-8.1-5-2.

(b) When claiming a refund arising from a net operating loss, the three (3) year limitation shall be determined by the year

in which the net operating loss is incurred, not the year to which the loss is carried back.

EXAMPLE

A taxpayer has a \$50,000 net operating loss in 19X4. The loss is carried back to 19X1, 19X2 and 19X3. The three (3) year limitations will begin to run on the latter of the due date of the 19X4 return or the date the return for 19X4 is filed. (*Department of State Revenue; 45 IAC 15-9-1; filed Oct 1, 1987, 1:30 pm: 11 IR 543*)

45 IAC 15-9-2 Statute of limitations for refunds

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-5-2; IC 6-8.1-9-1

Sec. 2. (a) If the department finds that a taxpayer has paid more tax than is legally due for a taxable period, the department shall apply the excess against any amount of that same tax that is assessed and is currently due. Any assessment by the department which has not been protested within sixty (60) days of the notice of proposed assessment shall be considered currently due.

(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.

EXAMPLE

A taxpayer is audited by the department for the tax period 19X3. This audit results in an overpayment of tax. The department has no legal authority to automatically [*sic.*] refund or credit this overpayment to the taxpayer. Instead, the taxpayer must file a claim for refund as prescribed in IC 6-8.1-9-1 and 45 IAC 15-9-1.

(c) If a taxpayer claims a refund for a period which is closed to issuance of a proposed assessment as defined in IC 6-8.1-5-2, the department may still examine the period in order to determine that the reasons set forth by the taxpayer for the refund are valid. The department may adjust the period to the extent necessary to make the issues raised by the refund conform to the applicable law.

EXAMPLE

A taxpayer claims a refund arising from alleged exempt sales in interstate commerce under the gross income tax. The tax period, 19X1, is open to a refund claim under IC 6-8.1-9-1 but is closed to assessment under IC 6-8.1-5-2. The department may still examine the 19X1 tax period in order to determine whether the interstate sales are exempt and were properly reported.

EXAMPLE

A taxpayer claims a refund arising from a net operating loss carryback. The carryback years are open to refund but not to assessment. The department may still examine the closed years to determine whether the net operating loss is valid and was properly calculated. This examination includes any adjustments to properly reflect the Indiana adjusted gross income for the carryback year.

(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. (*Department of State Revenue; 45 IAC 15-9-2; filed Oct 1, 1987, 1:30 pm: 11 IR 543*)

Rule 10. Set Off of Refunds

45 IAC 15-10-1 Joint returns

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-9.5-5; IC 6-8.1-9.5-11

Sec. 1. For purposes of IC 6-8.1-9.5-11, a co-refundee who is not a debtor must file with the department its defense to a proposed set off within thirty (30) days of the written notice provided in IC 6-8.1-9.5-5. A "defense" shall constitute any reasonable evidence which establishes that the co-refundee is not a debtor to the claimant agency. (*Department of State Revenue; 45 IAC 15-*

10-1; filed Oct 1, 1987, 1:30 pm: 11 IR 543)

Rule 11. Penalties and Interest

45 IAC 15-11-1 Liability for interest

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-10-1

Sec. 1. For purposes of this section, see 45 IAC 15-5-7(f)(1) and (2) for definitions of a "substantially blank return" and an "unsigned return." (*Department of State Revenue; 45 IAC 15-11-1; filed Oct 1, 1987, 1:30 pm: 11 IR 544*)

45 IAC 15-11-2 Liability for penalty

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-10-1

Sec. 2. (a) For purposes of this section, see 45 IAC 15-5-7(f)(1) and (2) for definitions of a "substantially blank return" and an "unsigned return."

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case. (*Department of State Revenue; 45 IAC 15-11-2; filed Oct 1 1987, 1:30 pm: 11 IR 544*)

45 IAC 15-11-3 Preparation of return by the department

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-10-3

Sec. 3. If a person fails to file a required return within thirty (30) days of the notice sent by the department, the department may prepare a return for the taxpayer. For this purpose, a "return" prepared by the department shall consist of an actual prescribed return, an audit report or a notice of tax due. (*Department of State Revenue; 45 IAC 15-11-3; filed Oct 1, 1987, 1:30 pm: 11 IR 544*)

45 IAC 15-11-4 Fraudulent intent to evade tax

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-10-4

Sec. 4. The penalty for failure to file a return or to make full payment with that return with the fraudulent intent of evading the tax is one hundred percent (100%) of the tax owing. Fraudulent intent encompasses the making of a misrepresentation of a material fact (See 45 IAC 15-5-7(f)(3)) which is known (See 45 IAC 15-5-7(f)(3)(B)) to be false, or believed not to be true, in order to evade taxes. Negligence, whether slight or great, is not equivalent to the intent required. An act is fraudulent if it is an actual, intentional wrongdoing, and the intent required is the specific purpose of evading tax believed to be owing. (*Department of State Revenue; 45 IAC 15-11-4; filed Oct 1, 1987, 1:30 pm: 11 IR 544*)

45 IAC 15-11-5 Bad checks; penalty

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-10-5

Sec. 5. For purposes of IC 6-8.1-10-5, reasonable cause for waiving the penalty shall constitute circumstances which were totally beyond the control of the taxpayer. Determination of reasonable cause is at the discretion of the department. (*Department of State Revenue; 45 IAC 15-11-5; filed Oct 1, 1987, 1:30 pm: 11 IR 544*)

45 IAC 15-11-6 Information return

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-10-6

Sec. 6. For purposes of IC 6-8.1-10-6, an "information return" shall constitute any return required by the Indiana Code, or department regulations to be filed by a taxpayer which does not report a tax liability. Such returns include, but are not limited to:

- (1) An S corporation return.
- (2) A partnership return.
- (3) A W-2 return.
- (4) A WH-18 return.
- (5) Certain fiduciary returns.
- (6) Not-for-profit returns.

(*Department of State Revenue; 45 IAC 15-11-6; filed Oct 1, 1987, 1:30 pm: 11 IR 544*)

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