



DEPARTMENT OF REVENUE

INDIANA GOVERNMENT CENTER NORTH
100 N. SENATE AVE

COMMISSIONER'S DIRECTIVE #13

OCTOBER 2015

Effective Date: July 1, 2015 (retroactive)

(Replaces Directive #13 dated June 2012)

SUBJECT: Claim for Refund Procedures

REFERENCES: IC 6-3-4-8; IC 6-8.1-1-4; IC 6-8.1-9-1; 45 IAC 15-9-2

DISCLAIMER: Commissioner's directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUMMARY OF CHANGES

Reflects changes to statutes of limitations for refunds on sales and use tax paid on utilities used in production, taxes withheld by employers, and refunds based on federal modifications. Also reflects changes to the procedure for protests of denied refunds.

INTRODUCTION

This directive sets forth the procedures that are to be followed by all taxpayers who file a claim for refund pursuant to IC 6-8.1-9-1 and outlines the proper manner in which the Indiana Department of Revenue will discharge its duties under the statute.

AUTHORITY

IC 6-8.1-9-1 establishes both the rights and the remedies for a taxpayer who determines that more tax has been paid than is legally due, except as provided under IC 6-8.1-9-3 for gasoline taxes, special fuel taxes, and motor vehicle taxes (other than interest and penalties). This section is in contrast to IC 6-8.1-9-2, where the department finds that a taxpayer has paid more tax than is legally due. Further, if a specific tax type has a statute of limitations for refunds other than provided in IC 6-8.1-9-1, that statute of limitations supersedes the general provisions of IC 6-8.1-9-1.

Section 1. Filing a Claim for Refund

A. Timeliness of Claim

IC 6-8.1-9-1(a) provides the general statutory period within which a claim for refund may be filed. The prerequisite for obtaining a refund is that the taxpayer must file the claim with the department within three years after the later of the following:

- (1) The due date of the return;
- (2) The date of payment; or
- (3) In the case of a return filed for the state gross retail or use tax, the gasoline tax, special fuel tax, or motor carrier fuel tax, the end of the calendar year that contains the taxable period for which the return is filed.

The special statutes of limitations found in IC 6-2-5-5-5.1 (relating to refunds for sales/use tax paid on utilities used in production) was repealed July 1, 2015. Any refund for sales/use tax paid on utilities used in production is now governed by the general statute of limitations found in IC 6-8.1-9-1(a).

In addition, IC 6-3-4-8(h) (relating to refunds for amounts withheld by employers) also was repealed effective July 1, 2015. Therefore, the statute of limitations for refunds for amounts withheld by employers is now governed by the general statute of limitations found in IC 6-8.1-9-1(a).

Note: There are two exceptions to the general three-year time period in which a claim for refund must be filed:

- Refunds of adjusted gross income tax or financial institutions tax as the result of a modification of a taxpayer's federal income tax liability by the Internal Revenue Service (IRS) must be filed by the later of (1) the due date for the refund otherwise provided by IC 6-8.1-9-1(a) or (2) one hundred eighty (180) days after a final determination regarding the modification.
 - A final determination means an action or decision by a taxpayer, the Internal Revenue Service, the United States Tax Court, or any other United States federal court concerning any disputed tax issue that is final

and conclusive, and cannot be reopened or appealed by a taxpayer or the IRS as a matter of law.

- Any extended statute of limitations does not apply to a tax return (or amended tax return) filed by the taxpayer without any action by the IRS. This includes amended returns filed by a taxpayer to report adjustments made by the IRS if a federal tax refund is not available for that taxable year (e.g., the federal return reports a net operating loss but the Indiana return reports a gain) AND a federal tax refund could not have been obtained for that taxable year even if the federal return had reported tax due.
- If an agreement to extend the statute of limitations for assessment is entered into under IC 6-8.1-5-2(h), the statute of limitations for filing a refund claim is extended to the same date to which the department may assess additional tax.

IC 6-8.1-1-4 defines “due date” to include the last day of an extension period. If an extension of time is applicable for the tax period for which the overpayment is claimed, the taxpayer must provide the department with information verifying the extension.

If the department determines that the claim for refund is barred by the statute of limitations, the taxpayer will receive a Refund Denial letter.

B. Substance and Form of Claim

The claim for refund must be filed on a Claim for Refund (Form GA-110L), an amended income tax return, or a withholding tax return (Form WH-3) that indicates an overpayment of tax.

IC 6-8.1-9-1(a) also mandates that the claim must set forth the amount of the refund claimed and the reasons that the taxpayer is entitled to the refund. 45 IAC 15-9-2(d) provides that the claim for refund must set forth:

- (1) The amount of refund claimed;
- (2) A sufficiently detailed explanation of the claim so that the department can determine its correctness;
- (3) The tax period for which the overpayment is claimed; and
- (4) The year and date the overpayment was made.

Pursuant to IC 6-8.1-9-1(b), which requires the department to consider the claim for refund, the department, as part of its consideration of the claim, may request any additional information that might be necessary in making a determination regarding the validity of the refund claim. If the information requested is not provided and the department therefore lacks sufficient information to grant the refund, the claim will be either rejected and returned to the taxpayer or denied. Additionally, if a taxpayer requests a refund of any tax overpayment, the department will review the taxpayer's complete account to determine overall compliance. If any required return has not been filed by the

taxpayer, the department will require the taxpayer to file any missing returns prior to issuance of claimed refund. Further, if there is any underpaid account period, the refund will be reduced to offset any amounts due.

The taxpayer who has failed to provide the department with the necessary requested information will receive a notice of the department's decision. This notice will be sent as a letter informing the taxpayer of the department's action. The decision by the department to reject and return a claim for refund due to insufficient information **does not** constitute a refund denial. For purposes of the applicable statute of limitations period in which the taxpayer may file a claim for refund, such statutory limitation is not suspended (or tolled) by the submission of an incomplete claim for refund. Additionally, in the event a subsequent claim for refund is submitted and granted, the period for refund payment without interest will begin from the date of the submission of the accepted claim for refund, not the date of the original rejected claim.

If the department grants the claim for refund in full, payment of the claim is sufficient notice of the department's decision. If the department grants the claim for refund in full and credits any of the amount granted to the taxpayer's future or current tax liabilities, the taxpayer will receive notice of the department's determination and resulting credit(s) allocated.

If the claim for refund is denied in part or in full, the taxpayer will receive a Refund Denial letter with an attached explanation stating the reason(s) for such denial. Payment of the portion of the claim that has been granted is sufficient notice of the department's decision regarding such portion. If the department grants the claim for refund in part and credits any of the amount granted to the taxpayer's future or current tax liabilities, the taxpayer will receive notice of the department's determination and resulting credit(s) allocated.

If the taxpayer receiving a Refund Denial letter does nothing, the Refund Denial letter becomes the department's final determination as to the refund requested. If the taxpayer receiving a Refund Denial letter requests an administrative hearing (as discussed in Section 2 of this directive), the Refund Denial letter is treated as a preliminary decision.

All Refund Denial letters will conclude with the following language:

If the taxpayer disagrees with any part of the department's decision, the taxpayer has 60 days from the date the Refund Denial letter is mailed to file a request with the department for an administrative hearing. The taxpayer can learn more about filing a request for administrative hearing by visiting the department's website at www.in.gov/dor/

Section 2. The Appeals Process—Requesting an Administrative Hearing

If a taxpayer's claim for refund has been denied but the taxpayer disagrees with the department's determination, the taxpayer can request an administrative hearing on the issue. The department shall, if requested by the taxpayer within 60 days of the mailing date of the department's Refund Denial letter, hold a hearing on the claim for refund for purposes of obtaining and considering additional evidence. The department will not initiate the hearing process. To request a hearing, the taxpayer should attach a request to a copy of the claim for refund form originally submitted to the department.

Example 1: The department issues the taxpayer a Refund Denial letter dated June 1 indicating that the taxpayer's claim for refund has been denied. The taxpayer receives the Refund Denial letter on June 5. The taxpayer has 60 days, beginning June 1, during which to request an administrative hearing appealing the decision.

If the department decides to grant the claim for refund in full based on information provided after the Refund Denial letter but prior to a hearing, the hearing will not be conducted. Payment of the claim is sufficient notice of the department's decision.

If the department decides to grant the claim for refund in part based on information provided after the Refund Denial letter but prior to a hearing, the hearing will not be conducted. The taxpayer will receive a revised or supplemental Refund Denial letter with an attached explanation stating the reason(s) for such denial. Payment of the portion of the claim that has been granted is sufficient notice of the department's decision regarding such portion.

If the taxpayer disagrees with the department's revised or supplemental Refund Denial letter, the taxpayer can request an administrative hearing on the issue. The department shall, if requested by the taxpayer within 60 days of the mailing date of the department's revised or supplemental Refund Denial letter, hold a hearing on the claim for refund for purposes of obtaining and considering additional evidence. The department will not initiate the hearing process. To request a hearing after a revised or supplemental Refund Denial letter, the taxpayer should attach a request to a copy of the claim for refund form originally submitted to the department.

If the department issues a Refund Denial letter, the taxpayer must request an administrative hearing in order to preserve the taxpayer's rights to appeal to the Indiana Tax Court. However, if the department does not issue a Refund Denial letter within 180 days after the taxpayer submits a claim for refund, the taxpayer may appeal to the Indiana Tax Court prior to receipt of a Refund Denial letter without pursuing an administrative hearing.

Once a hearing date has been confirmed, failure to provide sufficient evidence to verify the claimed overpayment will result in a Final Order Denying Refund. Failure to appear at the administrative hearing will result in a Final Order Denying Refund noting such failure to appear with an attached explanation of the department's reason(s) for denial.

If, subsequent to the hearing, the department determines that the claim will be granted in full, the taxpayer will receive a Memorandum of Decision with an attached explanation stating the reason(s) for the decision.

If, subsequent to the hearing, the department denies a portion of the claim and grants a portion of the claim, the taxpayer will receive a Memorandum of Decision with an attached explanation stating the reason(s) for the decision. If the taxpayer does nothing, that portion of the Memorandum of Decision denying a portion of the refund is treated as the department's final determination.

If, subsequent to the hearing, the department denies the entire claim, the taxpayer will receive a Final Order Denying Refund with an attached explanation stating the reason(s) for denial.

If a taxpayer disagrees, in whole or in part, with the Final Order Denying Refund or Memorandum of Decision, the taxpayer may request a rehearing no more than thirty (30) days after the decision is issued. The department may grant or deny the rehearing in its discretion.

Section 3. The Appeals Process—Filing an Appeal with the Tax Court

Subsequent to the administrative hearing process, any taxpayer in receipt of a Memorandum of Decision or a Final Order Denying Refund has a statutory remedy for appeal with the Indiana Tax Court as provided under IC 6-8.1-9-1(c). Each Memorandum of Decision and Final Order Denying Refund will be dated, and the date will correspond with the date the department mails the determination to the taxpayer. Unless a rehearing has been requested, the date the determination is mailed will begin the 90-day period within which an appeal must be filed with the Indiana Tax Court. If a rehearing is requested, the 90-day period is tolled until the department denies the rehearing request or issues a supplemental decision on the rehearing request.

In addition, if a department does not issue a Refund Denial letter within 180 days after the taxpayer submits a claim for refund, the taxpayer may appeal to the Indiana Tax Court without pursuing an administrative hearing.

IC 6-8.1-9-1(h) states:

If the person disagrees with any part of the department's decision, the person may appeal the decision, regardless of whether or not the person protested the tax payment or whether or not the person has accepted a refund. The person must file the appeal with the tax court. The tax court does not have jurisdiction to hear a refund appeal if:

(1) the appeal is filed more than ninety (90) days after the later of the dates on which:

- (A) the memorandum of decision or order denying a refund is issued by the department, if the person does not make a timely request for a rehearing under subsection (g) on the letter of findings; or
 - (B) the department issues a denial of the person's timely request for a rehearing under subsection (g) on the memorandum of decision or order denying a refund; or
- (2) the appeal is filed both before the decision is issued and before the one hundred eighty-first day after the date the person files the claim for a refund with the department.

The ninety (90) day period may be extended according to the terms of a written agreement signed by both the department and the person. The agreement must specify a date upon which the extension will terminate and include a statement that the person agrees to preserve the person's records until that specified termination date. The specified termination date agreed upon under this subsection may not be more than ninety (90) days after the expiration of the period otherwise specified by this subsection.

Example 2: The department issues the taxpayer a Refund Denial letter dated June 1 indicating the taxpayer's claim for refund has been denied. The Refund Denial letter is mailed on June 1. On June 15, the taxpayer appeals the decision to the Legal Division requesting an administrative hearing. The Legal Division conducts an administrative hearing and subsequently issues either a Final Order Denying Refund or a Memorandum of Decision dated September 1. The taxpayer does not request a rehearing. The document issued on September 1 constitutes the department's final determination of the matter. The taxpayer has 90 days, beginning September 1, in which to appeal the department's final determination to the Tax Court.

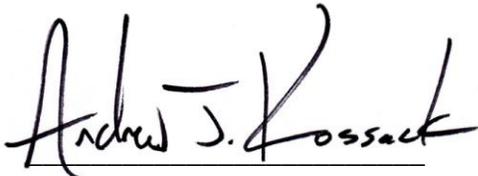
Example 3: The department issues the taxpayer a Refund Denial letter dated June 1 indicating the taxpayer's claim for refund has been denied. The Refund Denial letter is mailed on June 1. On June 15, the taxpayer appeals the decision to the Legal Division requesting an administrative hearing. The Legal Division conducts an administrative hearing and subsequently issues either a Final Order Denying Refund or a Memorandum of Decision dated September 1. The taxpayer requests a rehearing on September 30. The Legal Division denies the rehearing request on October 15.

As of July 1, 2015, the 90-day period to appeal the determination to the Tax Court is tolled because of the timely rehearing request. Upon the denial of the rehearing request, the taxpayer has 90 days, beginning October 15, in which to appeal the department's final determination to the Tax Court.

Example 4: The department issues the taxpayer a Refund Denial letter dated June 1 indicating the taxpayer's claim for refund has been denied. The Refund Denial letter is mailed on June 1. Subsequent to the Refund Denial letter, the taxpayer

does not request an administrative hearing with the Legal Division. The taxpayer may not appeal the department's refund denial to the Tax Court. The previous statutory allowance for an appeal to the Indiana Tax Court without requesting an administrative hearing was repealed effective July 1, 2015, with one exception explained in Example 5.

Example 5: The taxpayer files a claim for refund on March 1. The department does not issue a Refund Denial letter on or before August 28 (180 days after March 1). At any time on or after August 29 and before the department issues a Refund Denial letter, the taxpayer may file an appeal with the Tax Court.

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a horizontal line underneath the name.

Andrew Kossack
Commissioner