

BEFORE THE IOWA DEPARTMENT OF REVENUE  
HOOVER STATE OFFICE BUILDING  
DES MOINES, IOWA

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**DIRECTOR'S FINAL ORDER**

IN THE MATTER OF

JOHN LAZAR  
47 South Country Road  
Bellport, NY 11713

DOCKET NO. 23IDR0009  
REV. DOCKET NO. 2021-310-1-0116

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**PROCEDURAL SUMMARY**

On May 17, 2023, an Administrative Law Judge ("ALJ") issued a Proposed Decision in the above-captioned matter. In the Proposed Decision, the ALJ upheld the Department's denial of Mr. Lazar's claim for refund. On May 25, 2023, Mr. Lazar appealed the Proposed Decision to the Director of the Department of Revenue ("Director"). Mr. Lazar filed a supplement to his appeal on May 31, 2023. On June 19, 2023, the Director issued a Notice of Review to the parties and scheduled the review for September 6, 2023. The Notice provided both parties the opportunity to file initial and responsive briefs before the review. On July 21, 2023, Katherine Penland, Assistant Attorney General, filed a brief on behalf of the Iowa Department of Revenue ("Department"). No other briefs were filed prior to the review.

A review was held on September 6, 2023. Having reviewed and examined the written briefs, the record made before the ALJ, and the ALJ's decision, the Director issues the following order.

**FINDINGS OF FACTS**

The Director hereby adopts and incorporates into this decision the findings of facts made by the ALJ.

**CONCLUSIONS OF LAW**

The Director hereby adopts and incorporates into this decision the conclusions of law

made by the ALJ, with the following addition:

Iowa Code section 423.47 provides the means to obtain a refund or credit for tax, penalty, or interest that was “as a result of mistake” paid which was not due. Claims for refunds must be filed with the Department within the prescribed times stated in section 423.47, otherwise such claims “shall not be allowed by the director.” *Id.* The limitation time period imposed by this statute is not only imposed on taxpayers but on the Department as well. Section 423.47 provides no authority to grant exception to or waive the limitation period to the Department, therefore the Department is required to deny refund claims that fall outside the limitation periods.

Additionally, while the Director is “imbued with limited powers and duties via the Iowa Code . . . none of the Director’s powers extend so broadly as to enable the Director to disregard a statute of limitations.” *In the Matter of CRCR Corp. Budget Rent A Car v. Iowa Department of Revenue*, 2020 WL 8920379, at \*6. Further, “[t]he Director’s duty under the administrative review process is to [ensure] that the laws and rules, as they currently exist, are administered accurately.” *Id.* The Director is bound by the authority of the law as it is written and cannot disregard a statute of limitations. As such, the Director finds no error in the administration of Iowa Code section 423.47 in this matter.

### **ORDER**

IT IS THEREFORE ORDERED that the Administrative Law Judge’s Proposed Decision on DOCKET NO. 23IDR0009, REV. DOCKET NO. 2021-310-1-0116 is hereby AFFIRMED.

Issued at Des Moines, Iowa this 12<sup>th</sup> day of September, 2023.

IOWA DEPARTMENT OF REVENUE

BY Mary Mosiman  
Mary Mosiman, Director

**This decision has been appealed to the IDR Director.**  
**This decision has been affirmed by the IDR Director [Lazar, John, 2021-310-1-0116]**

Iowa Department of Inspections and Appeals  
Administrative Hearings Division  
Wallace State Office Building, Third Floor  
Des Moines, Iowa 50319

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IN THE MATTER OF	)	
	)	IDR Docket No. 2021-310-1-01116
John Lazar	)	
47 South Country Road	)	DIA Case No. 23IDR0009
Bellport, NY 11713	)	
	)	<b>PROPOSED DECISION</b>
RETAILER'S USE TAX	)	
	)	

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### STATEMENT OF THE CASE

John Lazar appealed the Department of Revenue's (Department) decision denying his refund claim. The matter came on for telephone hearing before this tribunal on May 16, 2023. Lazar appeared and testified. Assistant Attorney General Katherine Penland represented the Department, along with Department tax appeals specialist Lisa Krom. Official notice was taken of the administrative file. The Department submitted exhibits A-G, which were admitted into the record.

### FINDINGS OF FACT

On or around March 27, 2015, John Lazar, from his home in New York, made an online purchase of a skid steer loader located in Altoona, Iowa. (Ex. B). Lazar paid \$35,000 for the loader. (Ex. B). The invoice for the sale reports he paid Iowa sales tax at a rate of 6%, for a total payment of \$2,173.50. (Ex. B). Lazar paid the tax. (Lazar testimony).

Six years later, in 2021, Lazar, after completing some necessary repairs on the loader, registered the loader with the New York Department of Motor Vehicles (DMV). (Lazar testimony). To do so, he paid the DMV \$1,709.25. (Lazar testimony; Exs. E, F).

Around the same time, Lazar filed a refund claim with the Department. (Ex. B). He requested a refund of \$2,174<sup>1</sup> for tax paid on March 27, 2015. (Ex. B). To his application, he attached a form, apparently from New York, which states, "A New York State resident who purchases a qualifying vehicle or vessel outside the state becomes liable for New York State and local sales and use tax if the qualifying vehicle or vessel is brought into the state." (Ex. B). The form goes on to provide that New York may provide a credit against the tax owed to New York based on the amount paid to another state; however, according to the form, no such credit is allowed for taxes paid to Iowa. (Ex. B). The form hints: "You may eligible for a refund of the taxes paid to the other state." (Ex. B).

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<sup>1</sup> Lazar now seeks only the \$1,709 that he paid to New York. (Lazar testimony; Ex. F).

The Department denied the refund claim because “[t]he claim period is out of statute.” (Ex. A). Lazar appealed. (Ex. A).

Throughout informal proceedings, the Department maintained its position that the refund was correctly denied because of the statute of limitations in Iowa Code section 423.47. (Exs. C, D). The parties were unable to reach an agreement.

The Department filed an answer on January 12, 2023. At the same time, the Department requested a contested case hearing.

### CONCLUSIONS OF LAW

When tax, penalty, or interest related to sales or use tax has been paid but “was not due,” the person who made the erroneous payment may be entitled to a refund. Iowa Code § 423.47. To claim such a refund, such claim must be made “within three years after the tax payment for which a refund or credit is claimed became due, or one year after such tax payment was made, whichever time is the later.” *Id.* If such claim was made late, it “shall not be allowed by the director.” *Id.*

The parties have different ideas about when the tax here became due. The Department asserts it was due in 2015, when Lazar made the loader purchase. Lazar asserts it was due in 2021 when he paid the DMV.

Sales or use tax is collected at the time of a sale. Iowa Code § 423.14. The retailer who collects the tax holds it in trust for the state of Iowa and then remits the payment owed to the Department no later than the end of the next calendar month, or, in the case of smaller retailers, no later than January 31 of the next calendar year. Iowa Code §§ 423.2(11), .31(1), .31(3). In some sense, then, one could argue “the tax payment” at issue here was due in March 2015 (when the purchase was made), no later than April 2015 (when a large retailer would have needed to remit its payment to the Department), or no later than January 2016 (when a small retailer would have needed to remit its payment to the Department).

The tribunal concludes that the tax payment “became due,” or “was made,” for purposes of section 423.47, at one of those three times: March 2015, April 2015, or January 2016. The tribunal takes no position as to which time is correct. But even assuming the most generous deadline—January 2016—Lazar’s refund claim still falls outside the statute of limitations. At the very latest, even assuming that the tax here “became due” in January 2016, Lazar’s refund claim must have been submitted by January 2019 to be allowed. See Iowa Code § 423.47.

Lazar presents no evidence to support his assertion that the tax only “became due” in 2021. He argues that, when he paid the DMV, he was doubly taxed on this purchase and that his claim therefore became “ripe” at that time. Iowa Code section 423.47 does not offer such a waiting-for-ripeness exemption. In fact, the Department’s regulations, seemingly anticipating such an argument, allow taxpayers to file refund claims to be held in abeyance pending future events that could affect the taxpayer’s claim. Iowa Admin. Code r. 701-202.11(3). But the Department’s

regulations are clear that, without a claim filed (in abeyance or not), the statute of limitations continues to run. *Id.*

Here the relevant tax payment “became due” or “was made” no later than January 2016. One year later is January 2017. Three years later is January 2019. Lazar didn’t file his refund claim until 2021. That’s too late. In such situations, the refund claim “shall not be allowed.” Iowa Code § 423.47.

Lazar made several arguments in passing about why his purchase was exempt from the Iowa tax he paid. The tribunal need not reach those arguments, however, because he made his refund claim too late. “Limitation periods for causes of action are legislative pronouncements of policy barring actions for various policy reasons regardless of the merit of the action.” *Hamilton v. Hamilton*, 661 N.W.2d 832, 842 (Wis. 2003). Regardless of any merits, the claim here “shall not be allowed.” Iowa Code § 423.47.

The Department’s decision is affirmed.

#### **ORDER**

The Department’s decision is hereby affirmed. The Department shall take any action necessary to implement this decision.

Dated this 17th day of May, 2023.

cc: John Lazar (By Email and Mail)

Katherine Penland, Assistant Attorney General kate.penland@ag.iowa.gov (By AEDMS)

Lisa Krom, IDR, lisa.krom@dia.iowa.gov (By AEDMS)

Kelsie Royster, IDR, Kelsie.royster@iowa.gov (By AEDMS)

#### **NOTICE**

Pursuant to 701 Iowa Administrative Code 7.19(8)(d), this order becomes the final order of the Department for purposes of judicial review or rehearing unless a party files an appeal to or review on motion of the director with 30 days of the date of this order, including Saturdays, Sundays and legal holidays, of the date of this Proposed Decision to file an appeal to the Director of the Department of Revenue. The appeal shall be directed to:

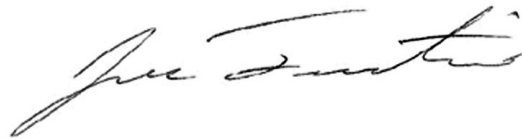
Office of the Director  
Iowa Department of Revenue  
Hoover State Office Building  
Des Moines, Iowa 50319

**Case Title:** IN THE MATTER OF: JOHN LAZAR

**Case Number:** 23IDR0009

**Type:** Proposed Decision

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Joe Ferrentino", written in a cursive style.

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Joseph Ferrentino, Administrative Law Judge