

**SANITIZED DECISION – DOCKET NO. 05-128 P – ROBERT W. KIEFER, JR., ALJ –
SUBMITTED for DECISION on MAY 18, 2005 – ISSUED on NOVEMBER 9, 2005**

SYNOPSIS

PERSONAL INCOME TAX – STATUTE OF LIMITATIONS – Taxpayers who file their personal income tax return for a given year outside of the generally applicable three-year statute of limitations period provided by W. Va. Code § 11-10-14(l)(1) are not permitted to claim a credit for a refund shown on said tax return against a valid income tax liability for a subsequent year.

PERSONAL INCOME TAX – STATUTE OF LIMITATIONS – The Petitioners have not provided any evidence that the amount they claim as a refund on their personal income tax return for the year 2000 resulted from adjustments made by the Internal Revenue Service, which would purportedly permit them to file said return pursuant to W. Va. Code § 11-10-14(l)(4), and thereby permit them to claim a credit for the refund shown due on said tax return against an income tax liability for a subsequent year. W. Va. Code § 11-10A-10(e) [2002]; W. Va. Code. St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

FINAL DECISION

On January 30, 2005, the Accounts Monitoring Unit of the Internal Auditing Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the Respondent”) issued a personal income tax assessment against the Petitioners. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code. The assessment was for the year 2001, for tax amount, and interest in the amount computed through January 30, 2005, and additions to tax in the amount, less a credit in the amount for a payment made by the Petitioners, for a total assessed tax liability. Written notice of this assessment was served on the Petitioners

Thereafter, by mail postmarked March 7, 2005, and received on March 8, 2005, the Petitioners timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. *See* W. Va. Code § 11-10A-8(1) [2002].

Subsequently, notice of a hearing on the petition was sent to the Petitioner and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002].

FINDINGS OF FACT

1. On or about November 16, 2004, the Petitioners filed their West Virginia personal income tax return for calendar year 2000.

2. The 2000 personal income tax return filed by the Petitioners showed that they were entitled to a refund for that year.

3. The due date for their 2000 West Virginia personal income tax return was April 15, 2001.

4. The return was filed more than 3 years after its due date.

5. By letter dated November 18, 2004, Unit Manager for the Special Audits & Estate Tax Unit of the Internal Auditing Division, informed the Petitioners that because their 2000 West Virginia personal income tax return had been filed more than three years after its due date, their claim for a refund in the amount would not be processed on the basis of the return.

6. The Unit Manager further informed the Petitioners that if their claim for refund was based on changes made by the Internal Revenue Service that resulted in adjustments reducing their West Virginia personal income tax, the claim for refund could be processed so long as it was filed within six months of their receipt of notice of the federal adjustments giving rise to the claim for refund.

7. The Unit Manager also advised the Petitioners that their return would be processed if they could provide documentation to show that changes resulted from adjustments made by the Internal Revenue Service on or after May 16, 2004, six months prior to the filing of the return.

8. On or about December 8, 2004, the State Tax Commissioner issued a notice of tax due to the Petitioners for the tax year 2001.

9. Apparently the Petitioners did not pay the amounts shown in the notice of tax due.

10. As set forth above, the State Tax Commissioner then issued the assessment against the Petitioners.

DISCUSSION

The issue presented in this matter is whether the Petitioners are entitled to a credit against their personal income tax liability for calendar year 2001. The Petitioners concede that the assessment for the year 2001 is correct. The basis for the credit is the personal income tax refund claimed for the year 2000. The State Tax Commissioner contends that the Petitioners are not entitled to the credit because they filed their personal income tax return for the year 2000 outside the applicable statute of limitations.

W. Va. Code § 11-10-14(*l*) provides, in relevant part:

(*l*) Limitation on claims for refund or credit –

(1) General rule -- Whenever a taxpayer claims to be entitled to a refund or credit of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, administered under this article, paid into the treasury of this state, the taxpayer shall, except as provided in subsection (d) of this section, file a claim for refund, or credit, within three years after the due date of the return in respect of which the tax (or fee) was imposed, determined by including any authorized extension of time for filing the return, or within two years from the date the tax, (or fee), was paid, whichever of the periods expires the later, or if no return was filed by the taxpayer, within two years from the time the tax (or fee) was paid, and not thereafter.

. . . .

(4) Overpayment of federal tax -- Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, in the event of a final determination by the United States Internal Revenue Service or other competent authority of an overpayment in the taxpayer's federal income or estate tax liability, the period of limitation upon claiming a refund reflecting the final determination in taxes imposed by articles eleven [§§ 11-11-1 et seq.], twenty-one [§§ 11-21-1 et seq.] and twenty-four [§§ 11-24-1 et seq.] of this chapter shall not expire until six months after the determination is made by the United States Internal Revenue Service or other competent authority.

As it pertains to this action, it is clear that the Petitioners filed their 2000 personal income tax return outside the statute of limitations. They were required to file a claim for refund within three years of the date that their personal income tax was due, or within six months after they were notified of a determination by the Internal Revenue Service that would entitle them to the refund of all or some of their West Virginia personal income tax. The due date of the Petitioners' 2000 personal income tax return was April 15, 2001. They filed their return on or about November 13, 2004. The Petitioners clearly filed their return more than three years after the due date of the return. Clearly, the return was filed outside of the statute of limitations.

The Petitioners were advised by the State Tax Commissioner that if their claim for refund was based on a determination by the Internal Revenue Service, it would be necessary for them to provide information evidencing the Internal Revenue Service's determination. Apparently, the Petitioners did not provide this information to the State Tax Commissioner. They presented no evidence at the hearing to show that the Internal Revenue Service made such a determination, or that such determination was made within the six month period preceding the filing of their return. Thus, this Office cannot conclude that the Petitioner's claim for refund is based on a determination by the Internal Revenue Service. Further, it cannot be determined that the Petitioner's return, if based on an Internal Revenue Service determination, was timely filed.

CONCLUSIONS OF LAW

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for refund or credit, the burden of proof is upon the Petitioners to show that they are entitled to the refund

or credit claimed by them. *See* W. Va. Code § 11-10A-10(e) [2002]; W. Va. Code. St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

2. The Petitioners have failed to carry their burden of showing that they filed their claim for refund or credit within three years of the due date of their 2000 personal income tax return.

3. The Petitioners have failed to carry their burden of showing that their claim for refund or credit is based on a determination by the Internal Revenue Service, or that their claim for refund was filed within six months of any such determination by the Internal Revenue Service.

4. The Petitioners in this matter have failed to carry their burden of showing that they are entitled to a refund or credit.

5. Because the Petitioners have admitted that the assessment issued against them for the year 2001 is valid, the assessment must be affirmed.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the West Virginia personal income tax assessment issued against the Petitioners for the year 2001, for tax in the amount, interest in the amount, through January 30, 2005, and additions to tax in the amount, less a credited payment totaling, should be and is hereby **AFFIRMED**.

Interest continues to accrue on this assessment until the same is fully paid.