

**REDACTED DECISION -- 06-752 RN – BY GEORGE V. PIPER, ALJ –
SUBMITTED for DECISION on MARCH 2, 2007 – ISSUED on MARCH 8, 2007**

SYNOPSIS

CORPORATE NET INCOME TAX -- REFUND CLAIM TIMELY FILED --

Because W. Va. Code § 11-10-14(1)(1)[2003] provides generally that a claim for refund or credit of a state tax is to be filed within three years after the due date of the return, including any authorized extension for filing the return, the fact that Petitioner filed its 2002 corporate net income tax return three (3) days prior to the extended due date of the return did not start the running of the three-year statute of limitations prior to the authorized extended filing due date of September 15, 2003.

FINAL DECISION

On September 15, 2006, the Petitioner filed claims for refund totaling \$ of West Virginia corporate net income tax for the periods ended December, 2002, and December, 1999. The Corporate Franchise Tax Unit of the Internal Auditing Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or the “Respondent”), by letter dated October 19, 2006, denied the entire refund claim. The reason stated for the total denial was that the original return was filed (postmarked) September 12, 2003 and the amended returns were filed (postmarked) September 15, 2006, which was beyond the generally applicable three (3)-year statute of limitations, in alleged violation of W. Va. Code § 11-10-14(1)(1)[2003].

Thereafter, by mail postmarked December 15, 2006, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for refund. *See* W. Va. Code §11-10A-8(2) [2002] and 11-10A-9(a)-(b)[2005].

In due course the presiding administrative law judge contacted the parties and advised them that the matter was to be submitted for decision on documents only, in lieu of holding a hearing in person, because he determined that their appearances in person were not necessary in order to render a decision on the merits (no disputed facts; well-settled question of law).

FINDINGS OF FACT

1. Respondent is authorized to grant extensions of time for filing state tax returns if a Petitioner follows the instructions included with, for example, the West Virginia corporate net income tax return, including attaching a copy of the federal extension to the West Virginia return, with the identically extended due date being entered on the top of the West Virginia return.

2. Petitioner had a valid extension of time until September 15, 2003 in which to file its 2002 corporate net income tax return based on the fact that it had obtained a federal extension and had indicated such at the top of its West Virginia return, as shown on the attached copy of the federal extension with its West Virginia return.

DISCUSSION

The primary issue raised in this matter is whether the Petitioner filed its claim for refund within the general limitations period established by W. Va. Code §11-10-14(1)(1)[2003], which provides:

(1) Limitation on claims for refund or credit.

(1) General rule.

Whenever a taxpayer claims to be entitled 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.

(bold print emphasis added here) This section required the Petitioner to file its claim for refund either within three years of the due date of the applicable corporate net income tax return, or within two years of the date that the corporate net income tax was paid, whichever of the periods expires later.

In this case Respondent has never contended that Petitioner did not follow the instructions to the letter in order for the Tax Commissioner to grant such an extension in the first place as authorized under West Virginia Code § 11-24-18 (extensions of time for filing).

Respondent's sole argument against granting Petitioner's refund claims is that said claims are violative of W. Va. Code § 11-10-14(1)(1)[2003], in that the general three-year statute of limitations began to run from September 12, 2003, the date of filing the return, rather than from September 15, 2003, which was the extended due date of the 2002 corporate net income tax return.

W. Va. Code § 11-10-14(1) (1) specifically provides that the general three-year statute of limitations runs from the extended due date of the return, which was September 15, 2003, and not September 12, 2003. Petitioner's refund claim for the year 2002 was postmarked September 15, 2006, and was, therefore timely filed.

The refund claim for the year 1999 was apparently timely filed in accordance with W. Va. Code § 11-10-14(1)(4)[2003] (not contested by Respondent in the claim denial letter).

CONCLUSIONS OF LAW

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

1. In a proceeding before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon a petitioner-taxpayer, to show the petitioner-taxpayer is entitled to the refund. *See* W. Va. Code § 11-10A-10(e) [2002].

2. The Petitioner-taxpayer did comply with the provisions of W. Va. Code § 11-10-14(1)(1) and (1) (4)[2003].

3. The Petitioner-taxpayer in this has carried its burden of proving that it is entitled to the refund.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the Petitioner's petition for refund of \$ of West Virginia corporate net income tax, for the periods ended December, 2002 and December, 1999, is hereby **AUTHORIZED**.

As set forth in W.Va. Code § 11-10A-18 [2002], the West Virginia State Tax Commissioner's Office is to see that the payment of the refund, plus statutory interest, is issued promptly.