

BEFORE THE WEST VIRGINIA OFFICE OF TAX APPEALS

REDACTED DECISION – DK# 12-105 RP-M

**BY: HEATHER G. HARLAN, CHIEF ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON SEPTEMBER 22, 2015
ISSUED ON MARCH 22, 2016**

SYNOPSIS

**WEST VIRGINIA OFFICE OF TAX APPEALS
CONCLUSION OF LAW
HEARING PROCEDURES**

In a hearing before this Tribunal, it is well settled that the taxpayer has the burden of proof. *See* W.Va. Code §11-10A-10(e); *RGIS Inventory Specialists v. Palmer*, 209 W.Va.154, 544 S.E.2d 79 (2001).

**WEST VIRGINIA OFFICE OF TAX APPEALS
CONCLUSION OF LAW
WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT**

“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 . . .the taxpayer shall, . . . 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.” W.Va. Code §11-10-14(l)(1); *see Bradley v. Williams*, 465 S.E.2d 180, 195 W.Va. 180 (1995); *Doran & Associates, Inc. v. Paige*, 464 S.E.d 757, 195 W.Va. 115 (1995).

**WEST VIRGINIA OFFICE OF TAX APPEALS
CONCLUSION OF LAW
PERSONAL INCOME TAX**

This Tribunal finds that the governing statute and legislative rules clearly grant the Respondent the power to investigate and to make changes to an individual's accounts or returns. *See* W.Va. Code §11-10-7; W.Va. Code §11-21-12 *et seq*; 110 Code of State Regulations 21, §59.

**WEST VIRGINIA OFFICE OF TAX APPEALS
CONCLUSION OF LAW
WEST VIRGINIA SUPREME COURT OF APPEALS**

As set forth by the West Virginia Supreme Court of Appeals, “the filing requirements established by statute, like the ones involved in the instant case are not readily susceptible to equitable modification or tempering.” *Helton v. Reed*, 638 S.E.2d 160, 164; 219 W. Va. 557, 561 (2006).

FINAL DECISION

On March 30, 2015, Petitioners filed their petition for refund (the “Petition”) with this Tribunal, the West Virginia Office of Tax Appeals (the “OTA”). The Petition was filed in response to that certain denial of a credit claimed on their 2010 personal income tax return (the “Denial”). The Denial set forth Petitioners’ appeal rights of the Denial, specifically, the time frame for filing an appeal and the Tribunal before which to file the Petition. On September 22, 2015, this Tribunal held an evidentiary hearing (the “Hearing”) regarding Petitioners’ Petition. The Hearing was held in Martinsburg, West Virginia, pursuant to Petitioners’ selection of OTA’s mobile docket procedures. This matter was heard in accordance with the provisions of West Virginia Code Section 11-10A-10.

FINDINGS OF FACT

1. The Petitioners, are a married couple, and reside a County in West Virginia and appeared *pro se*.

2. Timothy S. Waggoner represented the State Tax Commissioner of West Virginia (the “Respondent”).

3. Petitioners filed amended tax returns for the years ended December 31, 2010 through December 31, 2013, inclusive (the “Amended Returns”).

4. By letter dated May 2, 2014 and entitled “*Additional Information Needed*”, Respondent requested that Petitioners comply with the following request (the “Request Letter”):

Submit the following information to this office within twenty (20) days of the date of this letter to the address below. In order to process your 2010, 2011, 2012 and 2013 returns to claim the disability modification additional information is required. You must have your physician complete and sign a Schedule H Certification for Permanent and Total Disability. Only one schedule is needed. If your disability began on or before 2010 you may submit a Schedule H for 2010 and as long as your disability status did not change the 2010 Schedule H is the only schedule required. This may be mailed to the address above or faxed to 304-558-1150. Should you need further assistance concerning this matter, please contact Vickie Hager at (304) 558-8657.

5. Petitioner testified that the Amended Returns were filed because her accountant, not present at the hearing, advised Petitioners that they were entitled to claim the disability modification on their Amended Returns, given that Spouse Petitioner has, according to testimony, been disabled since April 15, 2003.

6. Upon discussion with their former accountant, Petitioners provided Respondent with the additional information requested in the Request Letter, namely “Schedule H Certification for Permanent and Total Disability.”

7. The Petition was filed in response to that certain letter entitled, *Letter re: Amended Personal Income Tax Return Not Processed* (“the Denial”), issued on February 18, 2015 by the Respondent.

8. According to the Denial, the Respondent received the Amended Returns on May 12, 2014.

9. The Denial stated, among other things, that “[t]he Statute of Limitations on claiming a refund for filing period December 31, 2010 has expired. Your amended return will not be processed but remains on file for information purposes. Therefore, the claim for refund in the amount of \$480.00 is denied.”

10. The Denial further provides that “[t]he Statute of limitations to file a claim for refund or credit is three years after the due date of the return or the extended due date of the original return or within two years from the date the tax was paid, or if no return was filed by the taxpayer, a claim for refund or credit must be filed within two years from the time the tax was paid.

DISCUSSION

In a hearing before this Tribunal, it is well settled that the taxpayer has the burden of proof. *See* W. Va. Code §11-10A-10(e); *RGIS Inventory Specialists v. Palmer*, 209 W. Va.154, 544 S.E.2d 79 (2001). Based upon review of the entire record of these proceedings, the Petitioners here have failed to meet their statutorily imposed burden of proof.

Petitioners argue that they should be excused from the statute of limitations violation for year ended December 31, 2010, inasmuch as 1) Petitioner has been disabled since April 15, 2003; 2) the Petitioners just became aware of the Schedule H modification to income for disabled individuals during tax year 2013; 3) the Petitioners’ accountant did not inform Petitioners that they needed to file Schedule H with the Amended Returns; 4) Once Petitioners received the Request Letter, they promptly completed and submitted the information requested, specifically, Schedule H; and 5) since the Amended Tax Returns were timely filed, albeit

excluding Schedule H, Petitioners argue that the Amended Returns should nevertheless be considered timely, particularly since they had no knowledge that a Schedule H was needed and considering that their accountant allegedly provided sparse assistance in obtaining, advising and assisting the Petitioners in filing their Amended Returns.

The governing statute provides that: “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 . . . **the taxpayer shall, . . . 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.”

W. Va. Code §11-10-14(l)(1) (emphasis supplied); *see Bradley v. Williams*, 465 S.E.2d 180, 195 W. Va. 180 (1995).

Case law construing W. Va. Code §11-10-14(l)(1) is clear that the statute of limitations for taxpayer refund claims prohibit any claim for refund or credit unless the taxpayer files said claim within three years after the due date of the income tax return in respect of which the tax was imposed or within two years from the date the tax was paid, whichever period expires later. *See Bradley v. Williams*, 465 S.E.2d 180, 195 W. Va. 180 (1995). Respondent maintains that it did not consider the Amended Returns complete, as evidenced by the issuance of the Request Letter. As stated previously, the information that Petitioners provided to Respondent in their response to the Request Letter was not received by the Respondent until beyond the statute of limitations for the 2010 tax return. Accordingly, the Respondent issued the Denial.

Petitioners question the policy of Respondent not to accept as timely their 2010 return for the reasons set forth herein. While those reasons, enumerated in the last paragraph of page 5, herein, are unfortunate, “the filing requirements established by statute, like the ones involved in

the instant case are not readily susceptible to equitable modification or tempering.” *Helton v. Reed*, 638 S.E.2d 160, 164; 219 W. Va. 557, 561 (2006). Moreover, the mandatory provisions of §11-10-14(l)(1), i.e., “shall”, denote that this Tribunal is largely without discretion to construe the governing statute.¹ See *Helton v. Reed*, 638 S.E.2d 160, 219 W. Va. 557, n.1 (2006).

Finally, the governing statute and legislative rules clearly grant the Respondent the power to investigate and to make changes to an individual’s accounts or returns. W. Va. Code §11-10-7; W. Va. Code §11-21-12 *et seq*; 110 Code of State Regulations 21, §59.

Because the statute governing the limitations period for refund claims is clearly unambiguous and given the West Virginia Supreme Court of Appeal’s admonition against equitable exceptions to tax statutes such as W. Va. Code 11-10-14, this Tribunal must strictly apply the statute of limitations for refund claims, and therefore, may not grant the Petitioners their requested relief.

Petitioners argue that they should not be held liable because they did not know about Schedule H and were not informed by either their accountant or the Respondent that such a schedule was necessary for a return claiming the credit to be considered complete. However, it is well settled that ignorance of the law is no valid excuse for failing to follow the law as set forth in The West Virginia Code. That Petitioners may have equitable arguments does not absolve them of the responsibility to follow the West Virginia Tax Code as written, including any legislative rules and other authoritative guidance.

¹ The *Reed* Court did note that “[t]he procedural merger of law and equity has not abolished all distinctions between the two.” *Helton v. Reed*, 638 S.E.2d 160, 219 W. Va. 557, n.5 (2006). However, in the very next footnote, the Court went on to state that “[o]f course, a rule that entirely barred the consideration of equitable principles in the enforcement of tax refund filing deadlines could be unconscionably harsh . . . [n]evertheless, the quoted authority illustrates a significant judicial reluctance to “bend the rules,” even for strong equitable reasons, in tax filing cases. *Id.* at n.6 (quoting *Bradley v. Williams* (internal citations omitted)).

CONCLUSIONS OF LAW

1. In a hearing before this Tribunal, it is well settled that the taxpayer has the burden of proof. *See* W. Va. Code §11-10A-10(e); *RGIS Inventory Specialists v. Palmer*, 209 W. Va.154, 544 S.E.2d 79 (2001).

2. This Tribunal finds that the governing statute and legislative rules clearly grant the Respondent the power to investigate and to make changes to an individual's accounts or returns as well as to make appropriate assessments for non-payment of taxes when necessary. *See* W. Va. Code §11-10-7; W. Va. Code §11-21-12 *et seq*; 110 Code of State Regulations 21, §59.

3. 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 . . .the taxpayer shall, . . . 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.” W. Va. Code §11-10-14(1)(1); *see Bradley v. Williams*, 465 S.E.2d 180, 195 W. Va. 180 (1995); *Doran & Associates, Inc. v. Paige*, 464 S.E.d 757, 195 W. Va. 115 (1995).

4. As set forth by the West Virginia Supreme Court of Appeals, “the filing requirements established by statute, like the ones involved in the instant case are not readily susceptible to equitable modification or tempering.” *Helton v. Reed*, 638 S.E.2d 160, 164; 219 W. Va. 557, 561 (2006).

DISPOSITION

Based upon the applicable case and statutory law and review of the entire record in this matter, it is the **FINAL DECISION** of the West Virginia Office of Tax Appeals that Petitioners' petition for refund of West Virginia personal income tax for the tax year ending December 31, 2010, in the amount of \$_____, should be and hereby is **DENIED**.

WEST VIRGINIA OFFICE OF TAX APPEALS

By: _____
Heather G. Harlan
Chief Administrative Law Judge

Date Entered