

SYNOPSIS

CORPORATE NET INCOME TAX -- INTEREST DUE ON REFUND -- WARRANT NOT TIMELY ISSUED -- "MATHEMATICALLY CORRECT" REFUND CLAIM SUPPORTED BY "NECESSARY DOCUMENTATION" -- Under W. Va. Code § 11-10-14d(a) [1996], the State Tax Commissioner owes interest on an overpayment of West Virginia corporate net income tax when the state warrant for the tax refund is not made within six (6) months after the date that the taxpayer files a "lawful, mathematically correct, uncontested claim for refund[.]"

A "mathematically correct" corporate net income tax refund claim, for purposes of W. Va. Code § 11-10-14d(a) & (b)(2) [1996], means such a claim that "appears on its face to be [mathematically] correct," W. Va. Code § 11-10-14d(b)(2) [1996]; a *de minimus* mathematical error discovered during a post-filing audit does not mean that the claim at the time of filing was not "mathematically correct" under this statute.

In addition, the "necessary documentation" mandated by W. Va. Code § 11-10-14d(b)(2) [1996] to support such an "uncontested" claim for refund of corporate net income tax means all of the information required by statute or legislative regulations to be set forth in or enclosed with the corporate net income tax return at the time of filing, not every detailed supporting form, schedule, analysis, data, or documents requested -- at one time or piecemeal -- after filing, to verify the lawfulness and accuracy of the return.

The State Tax Commissioner is protected in this context by W. Va. Code § 11-10-14d(c) [1996], which authorizes the Commissioner to issue a timely tax assessment, to recover any amount, including statutory interest, ~~to be~~ ^{to} have been erroneously refunded.

FINAL DECISION

FINDINGS OF FACT

1. On September 15, 1999, the Respondent, the West Virginia State Tax Commissioner, physically received a timely claim for refund of West Virginia corporate net income tax for the tax year ended December 31, 1998, filed by the Petitioner in the form of its annual West Virginia consolidated corporate net income tax return for that year.

2. The Respondent, by letter dated October 13, 1999, requested the Petitioner to send, by November 7, 1999, more detailed information to complete the "office audit" of the Petitioner's claim for refund of the overpaid corporate net income tax. One of the four additional items requested was a copy of the Federal Form 1118, "Foreign Tax Credit--Corporations."

3. On November 4, 1999, the Respondent received from the Petitioner all of

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the requested additional information.

4. By a letter dated March 22, 2000, the Respondent notified the Petitioner that she was granting the tax refund claim in part and denying the claim in part. The primary reason stated for the partial denial was that the Petitioner had overstated its decreasing modification from federal taxable income for foreign source income.

5. The state warrant in payment of the adjusted tax refund was issued on April 10, 2000.

6. On June 4, 2001, the Petitioner filed its claim for "refund" or payment of interest on the West Virginia corporate net income tax overpayment, from September 15, 1999 (the date the claim was filed) through April 10, 2000 (the date the state warrant was issued). This claim for interest was based upon the Petitioner's assertion that the tax refund was not issued within six (6) months after the corporate net income tax refund claim was filed, citing W. Va. Code § 11-10-17(e)(2) [1986].

7. On June 26, 2001, the Respondent denied the Petitioner's claim for payment of interest. Citing W. Va. Code § 11-10-14d(b)(2) [1996], the Respondent asserted that the statutorily required "lawful, mathematically correct, uncontested claim for refund" was not filed until submission of the additional information on November 4, 1999, which resulted in the April 10, 2000 tax refund payment being timely issued within six months after November 4, 1999.

8. On August 24, 2001, the Petitioner timely filed with the Respondent a petition for "refund" or payment of the interest on the corporate net income tax payment.

9. Subsequently, after, apparently, an attempted resolution of the matter with the then Acting Tax Commissioner, notice of a hearing on the petition was sent to the parties and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10. There was no appearance on behalf of the Petitioner when the evidentiary hearing was convened. The hearing was held, however, without an appearance on behalf of the Petitioner, in accordance with the provisions of W. Va. Code § 11-10A-10(a).

DISCUSSION

The issue is whether the Petitioner is entitled to interest on the corporate net income tax overpayment in question because the tax refund was not made timely.

W. Va. Code § 11-10-17(e)(2) [1986] provides that no interest is payable on a West Virginia corporate net income tax refund when the State Tax Commissioner

issues his or her requisition (as requested by the taxpayer in lieu of a credit) within six (6) months after the date that the taxpayer filed the claim for refund. Similarly (but with more detail), starting for claims for corporate net income tax refunds requested after January 1, 1997, the Legislature reiterated, in subsection (a) of new W. Va. Code § 11-10-14d [1996], that refunds of corporate net income taxes are to be made promptly, that is, within six (6) months after a “lawful, mathematically correct, uncontested claim for refund” was “filed” (the latter term defined in Code § 11-10-14d(b)(1) to mean the date the refund claim is physically received by the State Tax Division).

The term “lawful, mathematically correct, uncontested claim for refund” is a corporate net income tax refund claim (such as a return requesting a refund of an overpayment) that “is timely filed; is signed by the appropriate taxpayer or taxpayers; is mathematically correct; is supported by any necessary documentation; and appears on its face to be correct.” W. Va. Code § 11-10-14d(b)(2) [1996]. The dispute in this matter concerns the “mathematically correct” and “necessary documentation” requirements of this statute.

Respondent argues that the Petitioner’s refund claim (return) was not “mathematically correct,” because of the miscalculation of foreign source income. Respondent also argues that the Petitioner’s refund claim (return) was not supported by the “necessary documentation,” because it did not include, among other things, a copy of the Federal Form 1118, a form that was needed to verify the accuracy of the foreign source income calculation. Lacking these two statutory requirements for a “lawful, mathematically correct, uncontested claim for refund,” the Respondent argues

that the six-month period for issuing the refund did not commence until all of the requested information had been submitted on November 4, 1999, resulting in the timely (within six months) issuance of the refund on April 10, 2000.

On the other hand, the Petitioner argues that the mathematical error, detected upon audit, was less than one percent of the refund claim and was, therefore, *de minimus*. The Petitioner also argues that its refund claim was supported at filing by all documentation that was necessary at that time. Therefore, the Petitioner's contention is that interest is due on the refund claim not paid within six months after the September 15, 1999 filing of the claim.

CONCLUSIONS OF LAW

Based upon the facts and law discussed above it is **DETERMINED** that:

1. A "mathematically correct" West Virginia corporate net income tax refund claim, for purposes of W. Va. Code § 11-10-14d(a) & (b)(2) [1996], means such a claim that "appears on its face to be [mathematically] correct," W. Va. Code § 11-10-14d(b)(2) [1996]; a *de minimus* mathematical error discovered during a post-filing audit does not mean that the claim at the time of filing was not "mathematically correct" under this statute. This tribunal will not infer that the Legislature intended literal mathematical perfection to undermine the prompt payment of corporate net income tax refunds when the miniscule mathematical error was, as here, in good faith and was, as here, relatively easy to detect upon audit of requested supporting detail.
2. The "necessary documentation" mandated by W. Va. Code § 11-10-14d(b)(2) [1996] to support an "uncontested" claim for refund of corporate net income tax means all of the information required by statute or legislative regulations to be set forth in or enclosed with the corporate net income tax return at the time of filing, not every detailed supporting form, schedule, analysis, data, or documents requested -- at one time or piecemeal -- after filing, to verify the lawfulness and accuracy of the return. Otherwise, the six-month limit for paying corporate net income tax refund claims would be effectively emasculated.
3. The State Tax Commissioner is protected in this context by W. Va. Code § 11-10-14d(c) [1996], which authorizes the Commissioner to issue a timely tax assessment, to recover any amount, including statutory interest, believed to have been erroneously refunded.

4. The principle of statutory construction that governs in this matter is that "tax statutes [other than tax exemption statutes] are generally to be construed in favor of the taxpayer and against the taxing authority." *Doran & Associates, Inc. v. Paige*, 195 W. Va. 115, 120, 464 S.E.2d 757, 762 (1995) (earlier citations omitted).

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

6. The Petitioner-taxpayer in this matter has carried this burden of proof, in light of this tribunal's construction of W. Va. Code § 11-10-14d(b)(2) [1996].

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the Petitioner's petition for "refund" or payment of **INTEREST** on the overpayment of West Virginia corporate net income tax for the tax year ended December 31, 1998 is hereby **AUTHORIZED**, as provided by W. Va. Code § 11-10-14d(a).

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