

REDACTED DECISION – DK# 17-283 RP-M

**BY: CRYSTAL S. FLAIGAN, ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON DECEMBER 14, 2018
ISSUED ON APRIL 29, 2019**

BEFORE THE WEST VIRGINIA OFFICE OF TAX APPEALS

FINAL DECISION

On November 15, 2017, the Tax Account Administration Division of the West Virginia State Tax Commissioner's Office (hereinafter "Tax Department" or "Respondent") issued a refund denial letter to the Petitioner. This refund denial was issued pursuant to the authority of the State Tax Commissioner, granted to him by the provisions of Chapter 11, Article 10 *et seq.*, of the West Virginia Code. The refund denial stated that the Statute of Limitations expired for claiming a refund on tax year ending December 31, 2011, and the claim for refund was therefore, denied.

The Petitioner timely filed his Petition for Refund with the West Virginia Office of Tax Appeals on December 12, 2017. Subsequently, notice of a hearing on the petition was sent to the parties and in accordance with the provisions of West Virginia Code Section 11-10A-10, a hearing was held on September 12, 2018, in Martinsburg, West Virginia, and the matter became ripe for decision at the conclusion of the same.

FINDINGS OF FACT

1. The Petitioner was a resident of West Virginia during the 2011 tax year, and therefore, is required to pay West Virginia personal income tax.

2. On April 17, 2012, the Petitioner filed an extension for his 2011 taxes, which extended his due date for the 2011 returns until October 15, 2012. (Petitioner's Ex.1).

3. On April 14, 2014, the Petitioner sent certified mail containing his 2011 and 2012 returns to WV STATE with an address of Charleston, West Virginia 25301. The return receipt did not include a post office box or street address and was delivered on April 16, 2014, at 6:07 a.m. (Petitioner's Ex. 3 & 5).

4. On October 12, 2016, the Respondent received a letter dated October 10, 2016, from the Petitioner along with his 2011 and 2012 West Virginia income tax returns. (Petitioner's Ex. 2 & 6).

5. The Petitioner's 2011 tax return showed an overpayment of \$2,000.00 and was signed with a date of April 13 but no year. (Petitioner's Ex. 2.).

6. The Petitioner's certified mail receipt for the October 10, 2016, letter was addressed to WV TAX DEPT 2012, Box 1071, Charleston, WV 25324 and was received by the Respondent on October 12, 2016. (Petitioner's Ex. 7).

7. The Respondent's correct mailing address for tax refunds is West Virginia State Tax Department, Post Office Box 1071, Charleston, WV 25324-1071. (Petitioner's Ex. 4).

DISCUSSION

The Petitioner is a West Virginia resident who is required to pay West Virginia State Income Taxes. The Petitioner is seeking the overpayment of \$2,000.00 from his 2011 West Virginia State Income Tax Return and interest on his 2012 West Virginia State Income Tax Return. The Respondent concedes that the Petitioner is, in fact, entitled to the interest of his 2012 refund. This interest will be calculated from the date the return was received (October 12, 2016) and paid to the Petitioner. Therefore, the only issue in this case is whether the Petitioner timely

filed his 2011 West Virginia income tax return in order to claim an overpayment of \$2,000 for the 2011 tax year.

The controlling statute for overpayments and its limitations is West Virginia Code Section 11-10-14(a) and (1), respectively, which state as follows:

(a) *Refunds or credits of overpayments.* -- In the case of overpayment of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any of the other articles of this chapter, or of this code, to which this article is applicable, the tax commissioner shall, subject to the provisions of this article, refund to the taxpayer the amount of the overpayment or, if the taxpayer so elects, apply the same as a credit against the taxpayer's liability for the tax for other periods. The refund or credit shall include any interest due the taxpayer under the provisions of section seventeen of this article.

W. Va. Code Ann. § 11-10-14 (West).

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.

W. Va. Code Ann. § 11-10-14 (West).

The Internal Revenue Service cites to April 15th as being the typical filing deadline unless it falls on a Saturday, Sunday or legal holiday and the due date is delayed until the next business

day.¹ West Virginia personal income taxes are generally due April 15th following the tax year. W.Va. Code St. R. § 110-21-52.1.1. Thus, the 2011 tax year has a due date of April 15, 2012. The Petitioner filed an extension for his 2011 taxes making his taxes due on October 15, 2012. In order to receive his 2011 tax year overpayment, the tax department would have to receive his return no later than October 15, 2015.

The Petitioner claims he mailed his 2011 return on April 14, 2014. *See* Petitioner's Ex. No. 3. Exhibit 3 is a copy of his United States Postal Service (hereinafter "USPS") certified mail receipt with the tracking number 7012 2210 0001 7198 8391, dated April 14, 2014, and is addressed to WV STATE with no street or post office box address. The certified mail receipt does not include the West Virginia State Tax Department as being the addressee or any street or post office box. Moreover, the Petitioner knew the correct agency name and mailing address for refunds is West Virginia State Tax Department, Post Office Box 1071, Charleston, WV 25324-1071. *See* Petitioner's Ex. 4. Despite knowing the proper mailing address, the Petitioner takes the position that the return was received by the West Virginia State Tax Department on April 16, 2014, because the United States Postal Service (hereinafter "USPS") tracking website indicates that it was "delivered" to Charleston, WV 25301. The Respondent denies ever receiving the April 14, 2014 mailing.

The Petitioner essentially asks this Tribunal to assume that the 2011 West Virginia Income Tax Return was delivered to the West Virginia State Tax Department despite his failure to produce any evidence confirming his allegation. Although the USPS tracking website shows that mail was delivered to Charleston, West Virginia 25701, we don't know where this mail was received. We can only assume that something was delivered somewhere, but there is nothing

¹ <https://www.irs.gov/filing/individuals/when-to-file>

that indicates it was received by the West Virginia State Tax Department. It is just as likely that another governmental agency received this mail and did not know where to forward it. There are clearly many different hypothetical scenarios that could have happened with this mailing. We simply do not know where and who ultimately received it, and the Petitioner has not proven otherwise.

The Petitioner's 2011 income tax return was due October 15, 2012, and pursuant to West Virginia Code 11-10-14(1) the deadline to receive a refund was also October 15, 2015. However, the Respondent did not receive the return until October 12, 2016, which is approximately one year past the Statute of Limitations to receive a refund. Accordingly, the Petitioner has failed to meet his burden and cannot receive a \$2,000 refund for the 2011 return. However, as conceded by the Respondent, the Petitioner is entitled to his interest for the 2012 return from October 12, 2016, to the entry of this order.

CONCLUSIONS OF LAW

1. It is the duty of the Tax Commissioner to see that the laws concerning the assessment and collection of all taxes and levies are faithfully enforced. *See* W. Va. Code Ann. § 11-1-2 (West 2010).

2. Each year a tax is imposed, based upon a rate set by the legislature, on the West Virginia taxable income of every individual, estate and trust. *See* W. Va. Code Ann. § 11-21-3 (West 2010).

3. "The Tax Commissioner shall collect the taxes, additions to tax, penalties and interest imposed by this article or any of the other articles of this chapter to which this article is applicable." W. Va. Code Ann. § 11-10-11(a) (West 2010).

4. Resident individual means an individual: (1) Who is domiciled in this State, unless he maintains no permanent place of abode in this State, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this State. W. Va. Code Ann. § 11-21-7 (West 2013).

5. The Petitioner is a resident individual, as that term is defined in West Virginia Code Section 11-21-7, and as such, pays West Virginia taxes. W.Va. Code Ann. § 11-21-7 (West 2013).

6. The returns of individuals, trusts, estates, or partnerships required to be made under these regulations shall be filed on or before the fifteenth (15th) day of the fourth (4th) month following the close of the taxable year. W.Va. 110 C.S.R. 21 §110-21-52.1.1.

7. In a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon the Petitioner to show that he is entitled to the refund claimed by him. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010); W. Va. 121 C.S R. 1 §§ 121-1-63.1 and 69.2 (2003).

8. 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 by any article of this chapter, or this code, administered under this article, paid into the treasury of this state, the taxpayer shall, except as provided in this section, file a claim for refund, or credit, within 3 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. W.Va. Code § 11-10-14(1).

9. The Petitioner in this matter has not carried his burden of proving that the refund denial was erroneous, unlawful, void, or otherwise invalid.

FINAL DISPOSITION

Based upon the above, it is the **FINAL DECISION** of the West Virginia Office of Tax Appeals that the refund denial issued on November 15, 2017, for the 2011 income tax return is **AFFIRMED** and the accruing interest from October 12, 2016, to the entry of this order that is due to the Petitioner will be remanded for recalculation.

WEST VIRGINIA OFFICE OF TAX APPEALS

By: _____
Crystal S. Flanigan
Administrative Law Judge

Date Entered