

REDACTED DECISION -- 05-426 P -- BY R. MICHAEL REED, CHIEF ALJ -- SUBMITTED for DECISION on SEPTEMBER 11, 2006 -- ISSUED on FEBRUARY 14, 2007

SYNOPSIS

PERSONAL INCOME TAX -- "EQUITABLE RECOUPMENT" NOT APPLICABLE HERE -- The concept of "equitable recoupment" does not authorize a taxpayer to offset statutorily time-barred refund claims for certain tax years against tax due for separate tax years.

FINAL DECISION

On May 25, 2005, the then Acting Director of the Compliance Division ("the Division") of the West Virginia State Tax Commissioner's Office ("the Commissioner" or "the Respondent") issued a West Virginia personal income tax assessment against the Petitioners, husband and wife. 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 three calendar and tax years of 1997, 1999, and 2001, for tax of \$, interest, through May 25, 2005, of \$, and additions to tax of \$, for a total assessed West Virginia personal income tax liability of \$. Written notice of this assessment was served on the Petitioner on May 25, 2005.

Thereafter, by mail postmarked July 23, 2005, the Petitioners timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment,

including therein, in essence, a petition for refund. *See* W. Va. Code §§ 11-10A-8(1)-(2) [2002] and 11-10A-9(a)-(b) [2005].

Subsequently, after continuances requested by the parties (primarily by the Petitioners for serious health reasons), a notice of an evidentiary hearing on the petition was sent to the Petitioners and an evidentiary hearing was ultimately held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002] and W. Va. Code St. R. § 121-1-61.3.3 (Apr. 20, 2003). At the conclusion of the evidentiary hearing the undersigned presiding administrative law judge heard oral argument of the parties' representatives.

This matter was fully submitted for decision on September 11, 2006, the date on which this tribunal received from the Petitioners-taxpayers the last of their authorized post-hearing evidentiary submissions.

FINDINGS OF FACT

1. The Petitioners-taxpayers did not file their West Virginia personal income tax returns for the years 1994 through 2001 until a date in the year 2004 (either in August, 2004, or in December, 2004; the record is not clear). In contrast, the Petitioners-taxpayers had timely filed their federal income tax returns for these years. At the evidentiary hearing the two reasons given for the delay in filing the West Virginia personal income tax returns were that (1) the Petitioners-taxpayers had been very busy and that (2) they wanted to be sure to file accurate state personal income tax returns.

2. In, apparently, December, 2004, the Petitioners-taxpayers filed with the Respondent State Tax Commissioner their West Virginia personal income tax returns for each of the years 1994 through 2001. According to these delinquently filed returns, the

balance of tax itself due for each of the years 1997, 1999, and 2001 was the same as the amount of tax itself subsequently assessed for those years. For the other years involved in the West Virginia personal income tax returns filed in the year 2004, that is, for the years 1994 through 1996, 1998, and 2000, the Petitioners-taxpayers claimed a total “gross” refund of \$; the net refund claimed, after offsetting the tax-due balances for the years 1997, 1999, and 2001, was \$. (At the evidentiary hearing the Petitioners-taxpayers stated that they were not seeking any interest on the net refund claim.)

3. On a date not set forth in the record (apparently, formally on the same date that the assessment was issued), the Respondent denied the entire refund claim, as “time-barred” under the general refund-claim limitation period set forth in W. Va. Code § 11-10-14(l)(1), as amended, that is, the refund claim was not filed within three years after the due date of the return, including any authorized filing extension(s), or within two years after payment of the tax, whichever date is later. As stated above, the Respondent also issued the personal income tax assessment for the years 1997, 1999, and 2001, for the tax due for those three tax years.

DISCUSSION

The only issue is one of law, specifically, whether the Petitioners-taxpayers may apply the concept of “equitable recoupment” to offset the larger total amount of the “time-barred” personal income tax overpayments for the years 1994 through 1996, 1998, and 2000, against the personal income tax assessment for the underpayments for the years 1997, 1999, and 2001. This tribunal holds that the Petitioners-taxpayers may not do so, under well-settled law.

For example, the Supreme Court of the United States summarized the critical aspects of “equitable recoupment,” in *United States v. Dalm*, 494 U.S. 596, 110 S. Ct. 1361, 108 L. Ed. 2d 548, *reh’g denied*, 495 U.S. 941, 110 S. Ct. 2195, 109 L. Ed. 2d 523 (1990):

In sum, our decisions in *Bull* [*v. United States*, 295 U.S. 247, 55 S. Ct. 695, 79 L. Ed. 1421 (1935),] and *Stone* [*v. White*, 301 U.S. 532, 57 S. Ct. 851, 81 L. Ed. 1265 (1937),] stand only for the proposition that a party litigating a tax claim in a timely proceeding may, in that proceeding, seek recoupment of a related, and inconsistent, but now time-barred tax claim relating to **the same transaction**. In both cases, there was no question but that the courts in which the refund actions were brought had jurisdiction. To date, we have not allowed equitable recoupment to be the sole basis for jurisdiction.

Dalm, 494 U.S. at 608, 110 S. Ct. at 1368, 108 L. Ed. At 561 (underlining and bold print emphases added). Here, the state personal income tax refund claim, for the years 1994 through 1996, and the years 1998 and 2000, clearly does NOT relate to “the same transaction” involved in the state personal income tax assessment, which is for the entirely separate tax years of 1997, 1999, and 2001.

Moreover, “[h]e who seeks equity must do equity.” Syl. pt. 2, *Helton v. Reed*, ___ W. Va. ___, 638 S.E.2d 160 (2006). The Petitioners-taxpayers in the matter now before this tribunal have not even alleged, much less shown, that they had “clean hands” despite filing so delinquently their state personal income tax returns for the statutorily time-barred refund-claim years.

Finally, “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*, ___ W. Va. ___, ___, 638 S.E.2d 160, 164 (2006).

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 reassessment and a petition for refund, the burden of proof is upon a petitioner-taxpayer, to show that the assessment is incorrect and contrary to law, in whole or in part, and to show that the petitioner-taxpayer is entitled to the tax refund. *See* W. Va. Code § 11-10A-10(e) [2002] and W. Va. Code St. R. § 121-1-63.1 (Apr. 20, 2003).
2. The concept of “equitable recoupment” does not authorize a taxpayer to offset statutorily time-barred refund claims for certain tax years against tax due for separate tax years.
3. Accordingly, the Petitioners-taxpayers in this matter have failed to carry the burden of proof. *See* W. Va. Code St. R. § 121-1-69.2 (Apr. 20, 2003).

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 years 1997, 1999, and 2001, for tax of \$, interest of \$, and additions to tax of \$, **totaling \$**, should be and is hereby **AFFIRMED**.

Pursuant to the provisions of W. Va. Code § 11-10-17(a) [2002], **interest continue to accrue** on this tax assessment until this liability is fully paid.

IT IS ALSO the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the Petitioners’ “net” PETITION for **REFUND** of \$ of West

Virginia personal income tax, for the years 1994 through 1996, 1998, and 2000, is
DENIED.