

BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of)
)
BED, BATH & BEYOND INC.) OAH No. 19-1150-TAX
)
Corporation Net Income Tax, TPE 2/28/15)

DECISION

This tax appeal presents a single issue of how to calculate the statute of limitations for making a refund claim regarding overpaid state income tax. The parties submitted the case on briefs and an agreed record. They argued the case orally on April 16, 2020.

I. Background

This case relates to the corporate income tax returns of Bed, Bath & Beyond Inc. and subsidiaries (BBB) for its tax year ending February 28, 2015. After availing itself of a six-month automatic extension to December 15, 2015, BBB filed its original Alaska return and paid its tax on that date.¹ A federal return for the same tax period had apparently been filed about 30 days previously.²

In 2018, BBB identified underreported deductions and an underreported credit for the tax period ending February 28, 2015.³ It filed an amended federal return on November 9, 2018, claiming a refund of \$11,765,005.⁴ On January 11, 2019, the Internal Revenue Service granted and paid the refund in full, together with interest.⁵ The notice of overpayment noted that the amended return was still subject to audit.⁶

In the meantime, BBB had prepared an amended return for Alaska based on the same revisions and signed it on December 31, 2018.⁷ The Alaska Department of Revenue received it on January 7, 2019.⁸ The amended Alaska return claimed a refund of \$3424 or \$3425.⁹

The Department of Revenue denied the refund claim on the basis that BBB filed it more than three years after the date of the original Alaska return, which in Revenue’s view made it

¹ Agency Record (AR) 1, 7.
² Cf. AS 43.20.030 (Alaska deadline falls 30 days after federal).
³ AR 10.
⁴ AR 8.
⁵ AR 20.
⁶ *Id.*
⁷ AR 11.
⁸ *Id.*
⁹ AR 11 (\$3425); AR 18 (\$3424).

untimely.¹⁰ BBB initiated an informal conference to challenge the denial.¹¹ In requesting the conference, it relied on AS 43.20.030(d), noting that the statute reads in pertinent part:

Every taxpayer shall notify the department in writing of any alteration in, or modification of, the taxpayer's federal income tax return and of a recomputation of tax or determination of deficiency, whether with or without assessment. A full statement of the facts must accompany this notice. The notice shall be filed within 60 days after the final determination of the modification, recomputation or deficiency

BBB observed that its January 2019 filing was made less than 60 days after the November 9, 2018 amendment to the federal return.¹²

The Department of Revenue upheld its original denial in an Informal Conference Decision.¹³ This appeal followed.

II. Analysis

This case presents only questions of law, which will be reviewed on the tribunal's independent judgment.¹⁴ When the Office of Administrative Hearings or a court applies that independent judgment, the Department of Revenue's interpretation of the statutory scheme it administers is entitled to "some weight."¹⁵

A. Which State Statute Controls the Time Limit for a Refund Claim?

BBB renews its argument that the 60-day period in AS 43.20.030(d) controls the timeliness of its refund claim. Revenue has relied, instead, on AS 43.05.275, the general provision for credit and refund claims, which provides:

Except as provided in AS 43.20.021, a claim for credit or refund of a tax under this title for which the taxpayer is required to file a return . . . may be filed by the taxpayer

(1) before the later of

(A) three years from the time the return was filed; or

(B) two years from the time the tax was paid[.]

The first question in this case is whether AS 43.20.030(d) creates an override of AS 43.05.275, such that a claim of refund is due on the *later* of the date supplied by AS 43.05.275 or

¹⁰ AR 21, 23.

¹¹ AR 24-26.

¹² AR 25.

¹³ AR 31-32.

¹⁴ AS 43.05.435(2).

¹⁵ *State, Dep't of Revenue v. Alaska Pulp America, Inc.*, 674 P.2d 268, 274 (Alaska 1983) (Rabinowitz, J, addressing competing interpretations of a Revenue statute of limitations).

the expiration of the 60-day period in AS 43.20.030(d). The answer is clearly no. AS 43.20.030 is not a statute of limitations at all,¹⁶ and it sets no time limits for making a monetary claim against the state. Instead, it sets up a requirement for taxpayers who must file a federal return to also file a state return. Since Alaska income tax is based on income calculated under the federal Internal Revenue Code (IRC), it includes a requirement—subsection (d)—that a taxpayer must notify the Alaska Department of Revenue within 60 days if its federal return is ever altered in the future. This is simply a provision to ensure the integrity of a state system that piggybacks on a federal system: if the underlying federal return changes, the state obviously needs to know about the new return, not the superseded previous return. AS 43.20.030(d) is a notification and filing provision, not a statute of limitations for seeking money from the state.

The authorization and time limitation for a taxpayer to seek money from the state through a refund claim is found in the general Revenue statute—applicable to all types of taxes—in AS 43.05.275. In the current situation, it counts a three-year period from the date the taxpayer filed a return, “except as provided in AS 43.20.021,” which is the Alaska provision adopting the IRC.¹⁷ Our analysis must therefore turn to the adoption of the IRC.

B. Does Alaska’s Adoption of the IRC Create as Override to the Basic State Time Limit?

Alaska Statute 43.20.021, a provision of the income tax chapter, adopts large swaths of the IRC “unless excepted to or modified by other provisions of this chapter.” As a preliminary matter, we should bear in mind that AS 43.05.275 is not part of “this chapter,” and thus it creates no exception to what may be found in the IRC. Among the adopted sections of the IRC is §6511, a statute of limitations for credit and refund claims.

In general, §6511 is just like AS 43.05.275, requiring that a “Claim for credit or refund of an overpayment of any tax . . . be filed . . . within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later”¹⁸ If

¹⁶ Indeed, far from being treated as a statute of limitations, it has been treated by the courts as filing requirement a taxpayer must first comply with if the taxpayer wants the *benefit* of the statute of limitations found elsewhere in the Revenue code. *See Stevenson v. Burgess*, 570 P.2d 728 (Alaska 1977).

¹⁷ The word “return” in the statute means, of course, the original return, not the amended return—otherwise taxpayers could endlessly reopen the limitations period by filing amended returns, which would be an absurd result. Confirmation of this construction is found in federal cases applying identical language in 26 U.S.C. §6511(a). *See, e.g., McNaughton v. United States*, 612 Fed. Appx. 600 (Fed. Cir. 2015). The one exception is when the amended return is the first return on which the particular income at issue could have been reported (*see Greene v. United States*, 191 F.3d 1341 (Fed Cir. 1999), something that has not been shown to be the case with BBB.

¹⁸ 26 U.S.C. §6511(a).

anything the language is stronger, in that it affirmatively prohibits the allowance or payment of a refund unless the refund claim was made within the limitations period.¹⁹

IRC §6511 does have a special exception, found in subsection (d)(1), for certain refund claims involving bad debts or worthless securities. It applies a seven-year period to these.²⁰ And one small part of BBB's refund claim was, indeed, related in some unspecified way to bad debts.²¹ However, BBB has not attempted to try to bring any portion its refund claim within §6511(d)(1), and the record contains inadequate information on which to evaluate whether that might be possible.²²

BBB's central argument at the appeal level seems to be the following: (1) Alaska has adopted the IRC, including its limitations periods; (2) the federal statute of limitations was open as of January 7, 2019; and (3) therefore the state statute of limitations must have been open as well. BBB's argument fails at both steps (2) and (3).

Turning first to step (2), BBB has argued:

The IRS refund claim remained open until the claim was paid by the IRS by the IRS refund check dated January 8, 2019. The IRS could have offset the refund requested (limited to the requested amount) at any time up until the refund was issued. Therefore, the federal statute of limitations remained open until such time, i.e., January 8, 2019.²³

BBB cites no provision of the IRC—adopted by state law or not—that kept “the federal statute of limitations . . . open.” More fundamentally, BBB seems to be confusing the limitations period that applies to the taxing authority with the one that applies to the taxpayer. Regardless of the taxing authority's ability to claim an offset, what the taxpayer has to file is a “claim for credit or refund.” The IRC time limit for that kind of claim is in §6511. In cases in which the tax was paid on or before the return was filed, the time limit is counted from the date “the return was filed.” For BBB's federal refund claim, that period seems to have run on about November 15, 2018, three years after it filed its federal return. Thus, BBB's premise that “the federal statute of limitations remained open” is mistaken. For BBB's state refund claim, the return was filed later

¹⁹ 26 U.S.C. §6511(b).

²⁰ 26 U.S.C. §6511(d).

²¹ AR 10. The bad debt portion of the claim seems to account for about 1.5% of the changes in BBB's return, and thus would presumably relate to only about \$50 of the refund claim.

²² Insofar as an evidentiary showing might be needed to bring the case within this special provision, BBB had the burden to provide it. AS 43.05.455(c).

²³ BBB Opening Memorandum (Feb. 19, 2020) at 2.

and so the limitations period closed later, running on December 15, 2018, three years after BBB filed its state return.²⁴

BBB’s argument also fails on step (3). While federal *law* has been adopted into state tax law, it does not follow that a deadline for a federal action is always the same as a deadline for a state action. BBB had a deadline for its federal refund claim that was keyed to the date of “the return” for which the refund was being filed, its federal return. BBB’s deadline for a state refund claim was likewise keyed to “the return” for which the refund was being filed, but that was a different return—the state return. These are two different limitations periods, and nothing in state law or the IRC requires that they run concurrently.²⁵ Thus, even if the federal limitations period had still been open on January 7, 2019 (because, for example, BBB had filed a later federal return), it would not follow that the state deadline would have to be open as well.

III. Conclusion

The Informal Conference Decision of October 21, 2019, denying BBB’s January 7, 2019 refund claim in its entirety on the basis of untimeliness, is affirmed.

DATED: April 28, 2020.

By: Signed
Christopher Kennedy
Administrative Law Judge – Tax

NOTICE

This is the hearing decision of the Administrative Law Judge under Alaska Statute 43.05.465(a). Unless reconsideration is ordered, this decision will become the final administrative decision 60 days from the date of service of this decision.²⁶

A party may request reconsideration in accordance with Alaska Statute 43.05.465(b) within 30 days of the date of service of this decision.

²⁴ Because this date fell on a weekend, the actual deadline was December 17, 2018. *See* 26 U.S.C. §7503 (an incorporated provision of the IRC).

²⁵ *Louisiana-Pacific Corp. v. State, Dep’t of Revenue*, 26 P.3d 422 (Alaska 2001) is not to the contrary. It holds only that when a taxpayer executes a waiver agreement under the IRC extending the IRC statute of limitations for refunds, the terms of the waiver apply to both federal and state refund claims.

²⁶ AS 43.05.465(f)(1).

When the decision becomes final, the decision and the record in this appeal become public records unless the Administrative Law Judge has issued a protective order requiring that specified parts of the record be kept confidential.²⁷ A party may file a motion for a protective order, showing good cause why specific information in the record should remain confidential, within 30 days of the date of service of this decision.²⁸

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Statute 43.05.480 within 30 days of the date this decision becomes final.²⁹

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

²⁷ AS 43.05.470.

²⁸ AS 43.05.470(b).

²⁹ AS 43.05.465 sets out the timelines for when this decision will become final.