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JAN 10 2017

Montana Tax Appeal Board

BEFORE THE MONTANA TAX APPEAL BOARD

GAIL C. MURPHY,
POA, JOHN E. MURPHY JR.
Appellant,

v.

THE STATE OF MONTANA,
DEPARTMENT OF REVENUE,
Respondent.

CASE NO.: IT-2016-4

FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER
AND OPPORTUNITY FOR
JUDICIAL REVIEW

This case comes to the Board through a direct appeal by Taxpayer Gail C. Murphy from an adverse decision of the Office of Dispute Resolution (ODR) of the Department of Revenue (DOR) dated December 15, 2015. Taxpayer was represented by John E. Murphy, her son. The DOR was represented by Anthony Zammit. The Board heard the matter on the record without objection of the parties. The record includes all materials submitted to the ODR and additional materials submitted by the parties to this Board.

ISSUE

The issue is whether the Taxpayer is entitled to a refund for her late-filed 2008 Montana individual income tax return.

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, and of the time and place of the hearing. All parties were afforded an opportunity to present documentary evidence.
2. Many of these facts are not in dispute and will be taken from the December 15, 2015 Findings of Fact, Conclusions of Law, and Order of the DOR's Office of Dispute Resolution Hearing Examiner, Laura Cunningham (ODR decision).
3. Gail Murphy is over 90 years old, she has been debilitated by various illnesses and diminished mental capacity for over a decade which rendered her unable to handle her own financial affairs after her husband's death, and as a result she failed to file her 2008-2012 federal and state taxes. (ODR decision ¶¶3-5; Taxpayer's copies of federal Form 1040 (10 pages)).
4. In March of 2014, John E. Murphy became aware of his mother's delinquent filings from an Internal Revenue Service (I.R.S.) certified notice. (ODR decision ¶6). Mr. Murphy immediately took on the responsibility of bringing Mrs. Murphy into filing compliance and worked with an accountant to prepare the delinquent returns. (Id.; Form 1040s).
5. Mrs. Murphy who is a full time resident of Florida, had a Montana income tax filing requirement because she had Montana source income in the form of gas royalties that she inherited from a great-uncle. (ODR decision ¶7).

6. On December 16, 2014, Mr. Murphy filed his mother's 2008 Montana individual income tax return claiming a refund on the balance of withholding taxes overestimated and paid from Mrs. Murphy's gas royalties. (ODR decision ¶¶8,9).
7. DOR denied the claim for a refund for the 2008 tax year on the basis that it was filed more than five years after the return was due, and thus the DOR is barred from issuing a refund by the statute of limitations. (Id. at ¶10; Mont. Code Ann. §15-30-2605).
8. On January 15, 2015, DOR issued a Substitute Form 1099-G to Mrs. Murphy reporting two refunds issued by the DOR in 2014 identified as "2008 Income Tax \$1,924 2009 Income Tax \$459" even though the DOR never actually issued the 2008 refund. (Taxpayer's Substitute Form 1099-G).
9. The Taxpayer appealed the DOR's denial on three grounds: (1) a completed federal filing is necessary before a taxpayer can calculate their Montana tax liability; (2) there should be a 'reasonable cause' exception to the 5-year statute period; (3) that Montana's statute was suspended during the time I.R.S. was processing federal refunds claimed outside the federal 3-year statute. (ODR record docket #14 - Taxpayer's Response to DOR's Additional Documentation.)
10. As part of Mr. Murphy's efforts to bring his mother into filing compliance he submitted a Power of Attorney form (POA) designating himself to act on his mother's behalf to the I.R.S. on March 24, 2014, but it was not approved by the I.R.S. until July 2, 2015. (Id.) Mr. Murphy states that had the I.R.S. processed the POA form in a timely manner, no more than

5 days, it would have been issued within the statutory 5-year timeframe to file the 2008 Montana tax return. (Id.) Mr. Murphy claims that he was caught in a “catch-22” because the I.R.S. did not approve the POA until after the statute had run on the 2008 Montana tax return. (Id.)

11. Mr. Murphy submitted copies of the voluminous correspondence he has exchanged with the I.R.S. to bring to his mother into filling compliance. (Copies of I.R.S. correspondence.) These include I.R.S. letters sent in early 2015 denying claimed refunds because the “period for claiming an overpayment appears to be expired”, copies of Mr. Murphy’s Federal Form 843 – Claim for Refund and Request for Abatement, and finally an I.R.S. correspondence dated April 14, 2016, in which the I.R.S. “corrected accounts for tax periods 2011, 2012, and 2014. (Id.) Mr. Murphy’s written testimony states that the IRS applied overpayments from 2008 and 2009 to tax liabilities owed in later years, in essence the I.R.S. gave Mrs. Murphy credit for monies deposited in years for which the statute for claiming refunds had expired. (Murphy letter dated October 31, 2016.)
12. Mr. Murphy has requested that this Board look to the I.R.S. decision to credit refunds from expired years and order the DOR to issue the 2008 refund to his mother on the grounds that his mother’s mental incapacity resulting from her serious medical illnesses created the “‘Reasonable Cause’ and Circumstances Outside of the Taxpayer’s Control’ ... clearly, this Appeal falls under the catagory [sic.] of reasons a late filing is permissible & the refund should be issued.” (Id.)

CONCLUSIONS OF LAW

13. The Board has jurisdiction over this appeal. Mont. Code Ann. § 15-2-302.
14. To whatever extent the foregoing Findings of Fact may be construed as Conclusions of Law, they are incorporated accordingly.
15. The Montana Department of Revenue is an agency of the executive branch of government, created and existing under the authority of Montana Code Annotated, Title 2, chapter 15, part 13. The DOR is charged with the administration and enforcement of the Montana Code Annotated, Title 15, chapter 30 (Individual Income Tax) and the ancillary Administrative Rules of Montana (Mont. Admin. R.) Title 42, chapter 15.
16. Individual income tax returns must be filed “on or before April 15 following the close of the calendar year.” Mont. Code Ann. §15-30-2604(1)(a).
17. Any Montana taxpayer who claims a refund for overpayment(s) of income tax must do so within five years of the date the return was due. Mont. Code Ann. §15-30-2609.
18. Mrs. Murphy’s 2008 Montana individual income tax return was due on or before April 15, 2009 and thus the statute of limitations for claiming a refund expired 5 years later, on April 15, 2014. Mr. Murphy acknowledges that it was not filed until December 2014, 8 months after the statute had run. This deadline stands alone and is not dependent on when a taxpayer files any federal returns. While Mr. Murphy submitted evidence to substantiate his claim that the I.R.S. did not approve his

POA until July 2, 2015, the delay related to the I.R.S.' approval of Mr. Murphy's POA had no effect to toll the Montana statute of limitations.

19. However, Montana will suspend the statute of limitations for any period of time that the taxpayer has entered into a written agreement with the I.R.S. that has the effect of suspending the running of the federal statute of limitations and for 1 additional year. Mont. Code Ann. §15-30-2606. Any agreement between a taxpayer and the I.R.S. to extend the federal statute is completely voluntary and requires that the parties execute a federal form, Form 872 - Consent to Extend the Time to Assess Tax prior to the expiration of the statute.
20. While Mr. Murphy provided copies of many letters between himself and the I.R.S., he did not submit a copy of an executed federal Form 872, or any other written agreement evidencing that the I.R.S. entered into an agreement with Mrs. Murphy to suspend the federal statute of limitations, and thus the provision of Mont. Code Ann. §15-30-2606 to suspend Montana's statute of limitation does not apply.
21. Mr. Murphy's argues that Montana should grant a reasonable cause exception using the same evidence of his mother's infirmity and mental incapacity that the I.R.S. concluded was sufficient to apply the overpayments from expired years to other taxes still due. There is no reasonable cause exception in Montana law that gives the DOR, or this Board, authority to extend the statute of limitations for the reasons supporting Mrs. Murphy's appeal.
22. In contrast, the I.R.S. has clear statutory authority and discretion to apply refunds from closed years to other taxes still due and owing upon

a showing of reasonable cause. 26 U.S.C. §§6402 and 6511; I.R.M. 4.13.3.13, 4.13.3.15, 4.19.4.3.13. Unlike the DOR, the I.R.S. has discretion whereby a taxpayer can request the I.R.S. establish whether reasonable cause exists to abate a taxpayer's overpayments. In the current case, Mr. Murphy submitted a federal Form 843 – Claim for Refund and Request for Abatement to the I.R.S., whereby Mr. Murphy supplied the I.R.S. with documentation that his mother's infirmed condition rendered her unable to make a timely refund claim. After many months, many letters, and Mr. Murphy's laudable commitment, the I.R.S. appears to have determined reasonable cause did exist to credit her overpayments from expired years to other years where taxes were still due.

23. Unfortunately, the DOR has not been granted any such similar discretion in its administration of Montana's income tax laws. This Board affirms the ODR decision that the mechanism by which the Montana statute of limitations may be tolled must originate in statute, and no such statute for reasonable cause exists in Montana law.
24. The purpose of statutes of limitations in the tax law context is to bar the assertions of a refund claim after a certain period has passed, without regard to whether the claim would otherwise be meritorious. *U.S. v. Dalm*, 494 U.S. 596 (1990).
25. The Board does not doubt any of Mr. Murphy's evidence concerning his mother's infirmities or incapacity, however without any authority with which to grant relief, this Board has no other option but to affirm the ODR's decision.

26. This Board would be remiss not to mention the capricious actions of the DOR when it issued a Substitute Form 1099-G reporting to the I.R.S. that Mrs. Murphy had received an income tax refund in the amount of \$1,924 for tax year 2008 and yet never issued a corrected Form 1099-G to reflect the fact that DOR denied the refund claim. This Board does not have a copy of Mrs. Murphy's 2014 federal income tax return to know whether she itemized deductions such that this erroneous 1099 negatively affected her federal income tax liability for that year. No matter the egregiousness of DOR's actions they do not affect the ultimate disposition of this case.

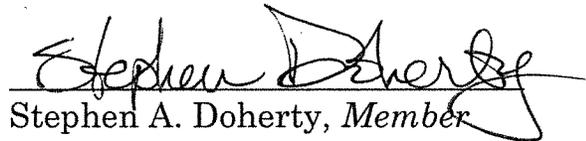
ORDER

27. It is therefore ordered that the Taxpayer's appeal and complaint is denied.

Ordered January _____, 2017.



David L. McAlpin, *Chairman*
MONTANA TAX APPEAL BOARD



Stephen A. Doherty, *Member*
MONTANA TAX APPEAL BOARD



Valerie A. Balukas, *Member*
MONTANA TAX APPEAL BOARD



Notice: You may be entitled to judicial review of this Order by filing a petition in district court within 60 days of the service of this Order. Mont. Code Ann. § 15-2-303(2.)

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the following Order to be mailed on the 10th day of January, 2017 to the following:

John E. Murphy, Jr.
POA for Gail C. Murphy
360 Southridge Drive
Pittsburgh, PA 15241

Anthony Zammit
MT Department of Revenue
Office of Legal Services
P.O. Box 7701
Helena, MT 59604-7701


Lynn Cochran, Paralegal