

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

GLACIER BANCORP, INC.,)	
)	DOCKET NO.: CT-2007-3
Appellant,)	
)	<u>ORDER</u>
v.)	
)	
THE DEPARTMENT OF REVENUE)	
OF THE STATE OF MONTANA,)	
Respondent.)	

The parties filed cross motions for summary judgment in the above-entitled matter, stipulated to certain facts and submitted accompanying materials. The Board, having determined that the stipulated facts are dispositive in this matter, incorporates those facts into this decision.

Statement of Issue

Glacier Bancorp filed an Amended Return requesting a refund for tax year 2001. The refund request was based, in part, on a prior submission in which Glacier Bancorp consented to an extension of the limitation period set out in §15-31-509, MCA. The Department of Revenue (DOR) denied the refund and contends that the requested extension is invalid because it failed to comply with statutory requirements.

The issue presented is whether the taxpayer's consent in the prior submission was adequate to extend the period of assessment as set forth in §15-31-509, MCA.

Findings of Facts

1. On February 28, 2005, the Idaho State Tax Commission issued Glacier's Notices of Deficiency Determination for tax years 2000-2002, which implicated income apportionment issues potentially impacting Glacier's income in Montana.
2. In April 2005, Justin Sliter, an accountant retained by Glacier, contacted the Department.
 - a. According to Mr. Sliter, he received advice via telephone regarding the procedure to extend the statute of limitations for Glacier's 2001 Form CLT-4. Mr. Sliter cannot recall the name of the individual he spoke with and no notes of that conversation were retained. *Letter from David Shultz to Brian Staley*, June 28, 2006, p. 3.
 - b. According to Mr. Staley, the Department's Corporate Tax Unit Manager, he asked the Department's corporate tax auditors if they recalled the conversation with Mr. Sliter referenced above and none did. *Final determination letter*, July 27, 2006.
3. On April 21, 2005, Glacier mailed a packet to the Department via certified mail. Glacier contends the packet contained the following material:
 - a. 2001 Form CLT-4 ("Initial Amended Return").
 - 1) At the top of the Initial Amended Return, Glacier typed "AMENDED".
 - 2) Lines 1-19 of Glacier's Initial Amended Return listed no adjustment (upward or downward)

to Glacier's federal taxable income, no adjustment to Glacier's Montana adjusted taxable income, and no adjustment to tax due/overpayment.

3) Glacier's Initial Amended Return was signed by James Strosahl on April 21, 2005.

4) Below Mr. Strosahl's signature, Glacier typed the following statement: "TAXPAYER AGREES TO EXTEND THE PERIOD FOR THE DEPARTMENT TO PROPOSE AN ADDITIONAL ASSESSMENT FOR THE PURPOSE OF EXTENDING THE PERIOD TO CLAIM A REFUND."

5) The Initial Amended Return does not specify a termination date for the period of extension claimed therein.

b. A Power of Attorney and Declaration of Representation naming David Schultz and Justin Sliter as representatives for Glacier, signed by Justin Sliter on April 14, 2005 ("POA").

c. A typed cover letter dated April 6, 2005, which is signed by David Schultz ("Cover Letter").

1) A copy of the Cover Letter contains a handwritten notation indicating that it was sent April 21, 2005.

2) The Cover Letter indicates that the Initial Amended Return is being filed due to the ongoing audit in the State of Idaho, which could impact the apportionment of income to Montana, and indicates that the Idaho audit will not be finalized before the statute of limitations on amending Glacier's 2001 Montana tax return expires.

4. The Department acknowledged receipt of the Initial Amended Return and the POA on April 22, 2005. However, the

Department contends that it has no record of receiving the Cover Letter.

- 5.. Glacier and the Department have never collectively executed any document indicating that the parties agreed to extend the period of limitation for assessing additional tax for 2001, and the Department never sought clarification from Glacier on the length of extension requested prior to denying said request.
6. On May 3, 2005, Glacier filed a written petition for re-determination with the State of Idaho.
7. The original due date for Glacier to file a refund claim for the 2001 tax year (absent extensions) expired on or about May 15, 2005.
8. Between April 22, 2005, and May 15, 2005, Glacier did not contact the Department regarding the packet of material it sent via certified mail on April 21, 2005.
9. On June 20, 2005, Glacier received Modified After Protest Notice of Deficiency Determination from the Idaho State Tax Commission.
10. In August, 2005, Glacier filed a second 2001 Form CLT-4 (“Second Amended Return) marked “As Amended”, claiming a refund due of \$22,744, relating to the income allocation adjustments determined in the Idaho proceeding.
11. Mr. Sliter contacted the Department via telephone on April 4, 2006, and inquired about the status of the 2001 amended return.
12. Mr. Sliter responded via email to Brian Staley regarding issues raised during the April 4, 2006, telephone conversation.
13. On June 2, 2006, the Department notified Glacier that the refund of \$22,744 requested on the Second Amended Return was denied due to expiration of the applicable statute of limitations.
14. On June 28, 2006, Glacier notified the Department that it objected to the Department’s denial of its 2001 refund claim.

15. On July 27, 2006, the Department sent Glacier its Final Determination that again denied Glacier's 2001 refund claim of \$22,744 due to the expiration of the statute of limitations.
16. Glacier initiated a timely appeal before the Office of Dispute Resolution on August 7, 2006.
17. On January 24, 2007, the Department's Hearing Examiner issued an order affirming the Department's denial of Glacier's 2001 refund claim.

Legal Standard

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56 (c), M.R.Civ.P. Once the moving party has established both the absence of genuine issues of material fact and entitlement to judgment as a matter of law, “the opposing party must present material and substantial evidence, rather than mere conclusory or speculative statements, to raise a genuine issue of material fact.” Hanson v. Water Ski Mania Estates, 2005 MT 47, P11, 108 P.3d 481, 484 (2005). In the case at hand, the parties have both moved for summary judgment, and the parties submitted stipulated facts.

Conclusions of Law

The State Tax Appeal Board has jurisdiction over this matter. Section

15-2-302, MCA.

Glacier Bancorp is subject to Montana corporate license tax under § 15-31-101, MCA, and the DOR has authority and responsibility to both assess tax liability and refund overpayments. Sections 15-31-503, 509, 531, MCA.

The legislature enacted certain limitations, however, including a statutory time limitation for both assessment of tax liability and payment of refunds.

Section 15-31-509, MCA, in relevant part states:

Periods of limitation. (1) Except as otherwise provided in 15-31-544 and this section, a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 3 years from the date that the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. ***When, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon.***

.....

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 3 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period the taxpayer files a claim for the refund or credit or the department has determined the existence of the overpayment and has approved the refund or credit. ***If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed in the event a claim is not filed must automatically be extended.....***

(Emphasis added).

Thus, § 15-31-509 (1), MCA, provides that “[w]hen, before the expiration of the period prescribed for assessment of the tax, the

taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon.” If the taxpayer has complied with that language, then § 15-31-509(2) dictates that a refund claim is treated in the same manner as an additional assessment.

Glacier Bancorp argues that it “agreed in writing under the provisions of subsection (1) [of Section 15-31-509] to extend the time within which the department may propose an additional assessment” by stating at the bottom of the Initial Amended Return “TAXPAYER AGREES TO EXTEND THE PERIOD FOR THE DEPARTMENT TO PROPOSE AN ADDITIONAL ASSESSMENT FOR THE PURPOSE OF EXTENDING THE PERIOD TO CLAIM A REFUND.” (FOF 3). Glacier subsequently filed a second amended return with a specific refund request of \$22,744.00.

The Department contends that Glacier failed to timely file for a refund because there was no agreement by the Department to extend the period of limitations and that the agreement was defective by failing to offer an end date for the extension. The Department does not contest the amount of refund due to Glacier Bancorp.

As we stated in *Northwest Farm Credit Services*, CT-2004-3, (upheld by the Lewis and Clark District Court, BDV-2006-884), “a factual determination

will be required in each instance to determine whether any exception to statutory time limitation(s) shall apply.” In this instance, there is no need to analyze the statutory language. The facts demonstrate that the Department constructively agreed to the extension of the period of limitations when the Department provided guidance to the taxpayer on filing for an extension of time to toll the statute of limitations. The taxpayer timely complied with the guidance given.

The evidence indicates that the taxpayer contacted the Department for guidance in extending the period in which to claim a refund. (FOF 2-4). The Department has a statutory duty to assist taxpayers. *See, e.g.* Taxpayer Bill of Rights, §15-1-222(14), Office of Taxpayer Assistance, §15-1-223(1)(c), MCA. Glacier Bancorp provided an affidavit that its representative contacted the Department for assistance and was provided verbal direction in the method of filing for an extension of the statute of limitations. Although the Department cannot confirm the verbal directive given to Glacier Bancorp, nothing in the record indicates that the Board should not give weight to the evidence Glacier Bancorp presented of the Department’s assistance in this matter.

There is no indication that the Department provided differing written guidance to a taxpayer attempting to comply with § 15-31-509, MCA. The Department’s website indicates which form is properly used to file a refund claim within the statutory period of limitations (form CLT-4), but provides no

written directive on filing for an extension of the statute of limitations.

Similarly, none of the Department's rules pertain to procedures for extending the period of limitations of 15-31-509, MCA. *See, e.g.,* Rule 42.23.601, ARM.

The verbal directive given to Glacier Bancorp regarding the procedure for compliance with §15-31-509(2), MCA, is properly treated as demonstrating the Department's tacit acquiescence to that procedure. Merely because the Department now provides a dissimilar directive is not sufficient to overcome the previous advice given. The Department may, in the future, eliminate such issues by developing written rules or procedures for extending the statute of limitations.

On the Taxpayer's part, it is certainly not best practice for a corporation to rely on verbal communications from the Department of Revenue, an organization with over 600 employees. There is no guarantee that any verbal communication is accurate or complete. In this instance the information provided verbally is sufficient to preserve the taxpayer's claim and the taxpayer timely acted upon that verbal advice. Such circumstances are unlikely to be the case in future matters.

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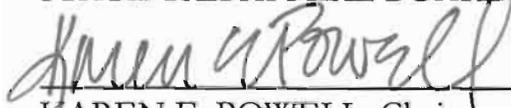
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Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that Glacier Bancorp's Motion for Summary Judgment is granted and the Department's Motion for Summary Judgment is denied. As this issue was the sole issue on appeal, this Order shall be deemed a final Order in favor of Glacier Bancorp.

DATED this 6th day of December, 2007.

BY ORDER OF THE
STATE TAX APPEAL BOARD



KAREN E. POWELL, Chairwoman

(S E A L)



SUE BARTLETT, Member



DOUGLAS A. KAERCHER, Member

Notice: You are entitled to judicial review of this Order in accordance with §15-2-303, MCA.

CERTIFICATE OF SERVICE

I certify that on this 6th day of December, 2007, a true and correct copy of the foregoing Order was served by placing same in the United States Mail, postage prepaid, and addressed as follows:

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