

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

NORTHWEST FARM CREDIT)	
SERVICES, ACA,)	DOCKET NO.: CT-2004-3
)	
Appellant,)	
)	
-vs-)	
)	ORDER DENYING
THE DEPARTMENT OF REVENUE)	NORTHWEST'S MOTION FOR
OF THE STATE OF MONTANA,)	PARTIAL SUMMARY JUDGMENT
)	AND GRANTING DEPARTMENT
)	OF REVENUE'S MOTION FOR
Respondent.)	PARTIAL SUMMARY JUDGMENT,
)	and OPPORTUNITY FOR
)	<u>JUDICIAL REVIEW</u>

A hearing on cross motions for partial summary judgment in the above-entitled matter was held in Helena, Montana on March 28, 2006, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law. The taxpayer was represented by James P. Sites and Theodore Botts, attorneys, and Ken Mathestad and Stacy Lavin of Northwest Farm Credit Services (Northwest). The Department of Revenue (DOR) was represented by Brendan Beatty and Derek Bell, tax counsels, and Brian Staley and Melissa Kopp, auditors.

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 partial summary judgment. The Board held a hearing, and the parties submitted stipulated facts.

STATEMENT OF THE ISSUE

Is the Department of Revenue prohibited from adjusting and assessing tax liability for tax years 1992, 1993 and 1994 due to the statute of limitations in §15-31-509, MCA (1995)?

This is an appeal from an audit and subsequent assessment of taxes to Northwest Farm Credit Services stemming from tax years ending December 31, 1992, December

31, 1993, and December 31, 1994 (hereinafter referred to as tax years 1992, 1993, and 1994). (Transcript of hearing on cross motions for summary judgment before the State Tax Appeal Board, page 2, lines 25-26.) The issue presented is whether the statute of limitations described in §15-31-509, MCA (1995) prohibits the DOR from assessing tax liability for tax years 1992, 1993 and 1994. (Transcript of hearing on cross motions for summary judgment before the State Tax Appeal Board, page 3, lines 1-3). Both parties move for summary judgment on the issue.

FACTUAL BACKGROUND

1. Northwest Farm Credit Services, ACA, (Northwest) is an agricultural credit association. (Stipulation of Facts, page 2, item 4).
2. As such, it is a federally chartered cooperative lending institution subject to regulation by the Farm Credit Administration pursuant to the authority of the Farm Credit Act, 12 U.S.C. § 2001 *et seq.* (Stipulation of Facts, item 2).
3. Given its cooperative structure, Northwest is not a commercial enterprise. It is wholly owned by and operated for the benefit of its

- eligible farmer member/borrowers. (Stipulation of Facts, item 14).
4. Northwest was formed on or about April 1, 1991, as a result of the merger of Interstate Federal Land Bank Association and Interstate Production Credit Association pursuant to 12 U.S.C. §2279c-1. (Stipulation of Facts, item 7).
 5. Interstate Production Credit Association, as the surviving entity, changed its name to Northwest Farm Credit Services, ACA. (Stipulation of Facts, item 8).
 6. The federal employer identification number of Interstate Production Credit did not change as a result of the merger or as a result of the name change to Northwest. (Stipulation of Facts, item 12).
 7. By statute, a merger of two corporations must be reported to the DOR within 30 days after the merger. Section 15-31-142, MCA.
 8. Northwest did not notify the DOR of the April 1991 merger within 30 days. (Stipulation of Facts, item 11).
 9. Northwest timely filed its original federal and state income tax returns for the tax years of

1992, 1993, and 1994. (Stipulation of Facts, item 21).

10. For its 1992, 1993, and 1994 Montana Corporation License Tax Returns as originally filed, Northwest reduced its Montana net income by certain net operating losses generated in prior periods by Interstate Production Credit Association. (Stipulation of Facts, item 31).
11. As a result of claiming a net operating loss deduction, Northwest paid only the minimum tax for 1992, 1993 and 1994 tax years. (Stipulation of Facts, item 32).
12. The DOR did not audit the state tax returns when filed. (Stipulation of Facts, items 33 and 34).
13. A question concerning the taxation of certain activities of the agricultural credit associations arose on a national level and the IRS disputed certain federal tax treatments of certain lending incomes of agricultural credit associations such as Northwest. (Stipulation of Facts, item 19).
14. Subsequent to the filing of its timely filed federal and state tax returns for the years

1992, 1993, and 1994, Northwest filed federal amended returns claiming a reduction in federal taxable income in amounts equal to 100 percent of its long-term mortgage lending income for tax years 1992, 1993, and 1994 on or about May 1996, September 1997 and September 1998, respectively, which it characterizes as "protective claims." (Stipulation of Facts, item 23).

15. Northwest filed similar federal amended returns with the IRS for each of the tax years 1995 through 1999. (Stipulation of Facts, item 24).
16. The IRS contested Northwest's amended federal filings claiming reductions in federal taxable income. (Stipulation of Facts, item 25).
17. The issues regarding Northwest's federal taxable income for the tax years 1992 through 1999 were ultimately resolved pursuant to the terms of a global resolution reached with the IRS (Stipulation of Facts, item 26).
18. In August 2001, Northwest received formal notification, in the form of an IRS §7121 Closing Agreement on Final Determination Covering Specific Matters ("Closing Agreement")

that its federal taxable income had been adjusted and finally determined pursuant to the terms of the global resolution. (Stipulation of Facts, item 27).

19. Northwest did not file any amended Montana returns at the time it filed amended federal returns in 1996, 1997 or 1998 or at any time prior to October 2001. (Stipulation of Facts, item 37.)

20. Under Montana law, a corporation filing an amended federal return is required to also file an amended Montana tax return within 90 days of the federal filing. (Section 15-31-506, MCA).

21. On or about October 9, 2001, Northwest filed amended Montana Corporation License Tax returns for each of the tax years 1992 through 1999 to report adjustments to its federal taxable income as finally determined by the IRS. (Stipulation of Facts, item 39).

22. The reductions in federal taxable income caused corresponding reductions in Northwest's Montana taxable income in each of the tax years 1992 through 1999. (Stipulations of Facts, item 40).

23. In filing amended Montana returns, Northwest indicated it had a net operating loss carry forward claim for tax years 1992-1999 leading to a requested refund of approximately \$2.8 million. (Stipulated Facts, Exhibits K through M).
24. The DOR audited the Montana amended tax returns for 1992 through 1999 tax years. By letter dated July 12, 2002, the DOR notified Northwest of certain adjustments relating primarily to disallowing certain net operating loss carry forward deductions, stemming from the two farm credit associations that merged to create Northwest in 1991. (Stipulation of Facts, Exhibit Q). By statute, a corporation cannot carry forward a net operating loss to a new entity. (Section 15-31-142, MCA.)
25. In connection with its adjustments, the DOR assessed Northwest additional Montana Corporation License Tax of \$100,544, plus interest for the tax year 1992, \$177,641 plus interest for the tax year 1993, and \$220,374 plus interest for the tax year 1994. (Stipulation of Facts, item 43).

26. The DOR's adjustments reduced Northwest's requested refund for 1995-1999 from \$2,828,242 to \$1,408,644. (Brendan Beatty, transcript, page 34, lines 12-17, March 28, 2006 Hearing on Cross Motions for Summary Judgment before State Tax Appeal Board.)
27. Northwest timely filed an objection to the DOR's assessments for tax years 1992, 1993 and 1994. (Stipulation of Facts, item 46).
28. Northwest argues that the DOR is prohibited from assessing liability for tax years 1992 through 1995 pursuant to the prohibitions outlined in § 15-31-509, MCA. (Memorandum in Support of Appellant's Motion for Partial Summary Ruling, page 2, paragraph 1).

CONCLUSIONS OF LAW

Northwest is subject to Montana corporate license tax under § 15-31-101(3), MCA, and the DOR has authority to assess tax liability under § 15-31-503, MCA, et seq.

The State Tax Appeal Board has jurisdiction over this matter. Section 15-2-302, MCA.

The legislature enacted certain limitations, however, including statutory time limitations for assessment. Section 15-31-509, MCA, (1995) states in relevant part

"[e]xcept as otherwise provided in § 15-31-544 and this section, no deficiency shall 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 5 years from the date the return is filed."¹

Although there is a five-year statute of limitations for imposition of an assessment, the legislature provided for elimination of the statute of limitations in certain circumstances. Section 15-31-544, MCA, (1995) provides in relevant part: "Whenever a return is required to be filed and the taxpayer files a fraudulent return or fails to file the return, the department may at any time assess the tax or begin a proceeding in court for the collection of the tax without assessment."

The DOR argues that Northwest failed to file a return under §15-31-544, MCA, which allows the DOR to assess additional tax liability for tax years 1992, 1993, and 1994. Northwest initially timely filed federal and state tax returns for the years 1992, 1993, and 1994. Northwest subsequently filed similar federal amended returns with the IRS for tax years 1992 through 1999. Northwest characterizes these filings as "protective claims."

¹ In 1997, the legislature subsequently shortened the statute of limitation to a three-year period.

Northwest did not, however, file any amended Montana tax returns prior to 2001.

Montana law requires filing an amended state return when a federal amended return is filed. Section 15-31-506, MCA.

In October 2001, Northwest filed amended Montana Corporation License Tax returns for each of the tax years 1992 through 1999 to report adjustments to its federal taxable income as finally determined by the IRS in its "Closing Agreement."

The October 2001 filing comports with a portion of §15-31-506, MCA, which requires notification to the DOR within 90 days of an IRS change or correction in taxable income of a corporation. Northwest failed, however, to comply with the further requirements of § 15-31-506, MCA. Any corporation filing an amended federal income tax return changing or correcting its taxable income for any taxable year shall also file an amended return with the DOR within 90 days thereafter. Section 15-31-506, MCA. At the time Northwest filed its 1992, 1993, and 1994 federal amended returns claiming reductions in federal taxable income, Northwest did not file corresponding amended Montana returns.

The language of §15-31-506, MCA, is explicit in its requirement that all corporations shall file amended Montana returns upon either notification from the IRS of a change in taxable income or a corporation itself filing an amended federal return. Though Northwest complied with a portion of the statute, it did not comply with the requirement to file an amended Montana return when it filed amended federal returns. As the return was required to be filed under law, and Northwest failed to file a return, the DOR may at any time assess the tax pursuant to §15-31-544, MCA.

Northwest argues that the filing of an amended return does not authorize the DOR to assess further liability. The taxpayer argues that §15-31-509(1)(b), MCA, is in direct conflict with the DOR's interpretation of § 15-31-544, MCA. Section 15-31-509, MCA, states in relevant part:

"[t]he limitations prescribed for giving notice of a proposed assessment of additional tax shall not apply when:

(b) a taxpayer has failed to file a report of changes in federal taxable income or an amended return as required by 15-31-506 until 5 years after the federal changes become final or the amended federal return was filed, whichever the case may be.

A plain reading of § 51-31-509(1)(b), MCA, merely provides for an additional tolling of the limitations for the DOR to assess additional tax. The language does not conflict with §15-31-544, MCA, but allows for an additional instance in which the DOR may not be bound to a five-year (now three year) limitation on assessment of tax liability. A factual determination will be required in each instance to determine whether any exception to statutory time limitation(s) shall apply.

Northwest further argues that the legislative amendment that shortened the general statute of limitation from 5 years to three years prevents the DOR from assessing certain liabilities in this matter. As §15-31-544, MCA, eliminates the general statute of limitations in this matter, whether the general statute of limitation is 5 years or three years is not at issue.

Because Northwest failed to timely file an amended Montana return at the time it filed amended federal returns, and such a return was required by §15-31-506, MCA, the DOR may assess tax liability pursuant to §15-31-544, MCA, and is not barred by statute of limitations. Northwest's filing in 2001 of the successful adjustment of its federal return does not act to cure the earlier failures.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that Northwest's Motion for Partial Summary Judgment is hereby denied and the DOR's Motion for Partial Summary Judgment is hereby granted.

IT IS FURTHER ORDERED that a telephonic scheduling conference will be conducted on Tuesday, November 14, 2006 at 11:00 a.m. The Board will initiate the call.

DATED this 1st day of September, 2006.

BY ORDER OF THE
STATE TAX APPEAL BOARD

KAREN E. POWELL, Chairwoman

(S E A L)

JOE R. ROBERTS, Member

SUE BARTLETT, Member

Notice: You are entitled to judicial review of this Order in accordance with § 15-2-305, MCA.

CERTIFICATE OF SERVICE

I certify that on this 1st day of September, 2006, 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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