

PETITIONER APPEARING PRO SE:
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**IN THE
INDIANA TAX COURT**



CAROLYN GIBSON,)
)
 Petitioner,)
)
 v.)
)
 INDIANA DEPARTMENT OF STATE)
 REVENUE,)
)
 Respondent.)

Cause No. 49T10-1204-TA-20

ORDER ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

NOT FOR PUBLICATION
November 1, 2012

FISHER, Senior Judge

Carolyn Gibson has appealed the Indiana Department of State Revenue's denial of her income tax refund claim for the 2007 tax year. The matter is currently before the Court on the Department's Motion for Summary Judgment.

FACTS AND PROCEDURAL HISTORY

In 2011, Ms. Gibson filed her Indiana Individual Income Tax Return, Form IT-40, electronically. (See Resp't Mot. Summ. J., Ex. F at 1.) The Form IT-40, however, was rejected because Ms. Gibson, in computing her Indiana adjusted gross income,

erroneously added back certain local property tax payments.¹ (See Resp't Mot. Summ. J., Ex. F at 1 (footnote added).) At this point, Ms. Gibson realized that for the last twelve years she had erred in computing her Indiana adjusted gross income and overpaid her income tax liability. (See Resp't Mot. Summ. J., Ex. B at 1.) Ms. Gibson contacted the Department to inquire about a refund and was "told that [she] could file an appeal going back three years[.]" (See Resp't Mot. Summ. J., Ex. B at 1.) Accordingly, on April 26, 2011, Ms. Gibson filed three refund claims for income tax with the Department by filing amended returns for the 2007 through 2009 tax years. (See Resp't Mot. Summ. J., Exs. E at 1, F at 2.)

On August 8, 2011, the Department denied Ms. Gibson's refund claim for the 2007 tax year.² (Resp't Mot. Summ. J., Ex. A (footnote added).) Ms. Gibson protested the denial and the Department set the matter for hearing. (See Resp't Mot. Summ. J., Exs. B-D.) On January 9, 2012, after conducting its hearing, the Department issued a final order explaining that Ms. Gibson's 2007 refund claim must be denied because it was untimely filed. (Resp't Mot. Summ. J., Ex. E at 2-3.) Ms. Gibson then unsuccessfully sought a rehearing. (See Resp't Mot. Summ. J., Exs. F-G.)

On April 10, 2012, Ms. Gibson initiated an original tax appeal. The Department filed this Motion for Summary Judgment on August 8, 2012. The Court held a hearing

¹ Prior to 1998, Indiana Code § 6-3-1-3.5 required an individual to "add back" to her adjusted gross income "an amount equal to any deduction or deductions allowed or allowable pursuant to Section 62 of the Internal Revenue Code . . . *for taxes on property levied by any subdivision of any state of the United States.*" IND. CODE § 6-3-1-3.5(a)(2) (1998) (emphasis added). In 2009, however, the statute only required an individual to "add back" "an amount equal to any deduction or deductions allowed or allowable pursuant to Section 62 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States." IND. CODE § 6-3-1-3.5(a)(2) (1999).

² The Department granted Ms. Gibson's refund claims with respect to the 2008 and 2009 tax years. (See Resp't Mot. Summ. J., Ex. F at 1.)

on the Motion on October 22, 2012. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

Summary judgment is proper only when the designated evidence demonstrates that no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). A genuine issue of material fact exists when a fact concerning an issue that would dispose of the case is in dispute or when the undisputed material facts support conflicting inferences as to an issue. See Gaboury v. Ireland Road Grace Brethren, Inc., 446 N.E.2d 1310, 1313 (Ind. 1983); Scott Oil Co. v. Ind. Dep't of State Revenue, 584 N.E.2d 1127, 1129 (Ind. Tax Ct. 1992). The Court will construe all properly asserted facts and reasonable inferences drawn therefrom in favor of the non-moving party. See Scott Oil, 584 N.E.2d at 1128-29 (citation omitted).

ANALYSIS AND ORDER

The Department asserts that it is entitled to judgment as a matter of law because the undisputed material facts show that Ms. Gibson's 2007 refund claim was untimely filed pursuant to Indiana Code § 6-8.1-9-1.³ (See Resp't Br. at 7-8 (footnote added).) Ms. Gibson, however, argues that principles of equity rather than the strict letter of the law should guide the Court in resolving this matter. Specifically, Ms. Gibson explains that she simply made an honest mistake in attempting to comply with Indiana's ever-evolving tax laws and that she should not be penalized for that mistake. (See Pet'r Br. at 1.) According to Ms. Gibson, line 2 on Form IT-40, the "Tax Add-Back" line, has not materially changed since 1993 and, as a result, she received insufficient notice

³ The Department has also claimed that Gibson's original tax appeal was untimely filed. (See Resp't Br. at 6-7.) Nevertheless, it appears that the Department has determined that it need not pursue the claim to resolve the matter at hand. (See Hr'g Tr. at 4.) Consequently, the Court shall not address the claim any further.

regarding the 1999 amendment of Indiana Code § 6-3-1-3.5. (See Hr'g Tr. at 5-8; Pet'r Br. at 1-2, Exs. 1-8.) See also note 1. Ms. Gibson further argues that this lack of notice was even more egregious because the Department did not identify her reporting error for twelve years. (See Hr'g Tr. at 7-8; Pet'r Br. 1.) Ms. Gibson contends that a finding in favor of the Department imposes an unreasonable penalty upon her (i.e., the loss of thousands of dollars) in light of the facts and circumstances that led to her mistaken overpayment of income tax. (See Hr'g Tr. at 5-6; Pet'r Br. 1.) Ms. Gibson, therefore, requests that the Court award her all of the income tax overpayments made for the 1999 through 2007 tax years. The Court, however, cannot grant Ms. Gibson's request.

Indiana Code § 6-8.1-9-1, in relevant part, provides that:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. . . . [I]n order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

- (1) The due date of the return.
- (2) The date of payment.

IND. CODE § 6-8.1-9-1(a) (2011) (amended 2012). There is no dispute that Ms. Gibson's 2007 IT-40 was due on April 15, 2008. Consequently, Ms. Gibson needed to file her refund claim for the 2007 tax year on or before April 15, 2011. Ms. Gibson, however, did not file her 2007 refund claim (via her 2007 amended IT-40) until April 26, 2011, exactly eleven days too late.

Furthermore, the Court need not determine whether the changes to line 2 of the IT-40 provided Ms. Gibson with sufficient notice as to the 1999 amendment of Indiana Code § 6-3-1-3.5 because the IT-40 instruction booklets for the 1999 and 2000 tax years clearly provided notice as to the amendment. (See Resp't Mot. Summ. J., Ex. G.)

See also <http://www.in.gov/dor/3488.htm>. Moreover, the IT-40 instruction booklets for the 2001 through 2010 tax years contain the following statement with respect to line 2 and the adding back of property taxes: “**Do not** add back any property taxes on this line.” (See Resp’t Mot. Summ. J., Ex. G.) See also <http://www.in.gov/dor/3488.htm>.

Ms. Gibson’s situation reflects some of the challenges Indiana citizens have in understanding the changes to, and complexities of, our tax system. While the Court is sympathetic to Ms. Gibson’s plight, it must apply the laws as they are written. See Scopelite v. Indiana Dep’t of Local Gov’t Fin., 939 N.E.2d 1138, 1144 (Ind. Tax Ct. 2010) (stating that the Court will not read provisions into statutes where they do not exist) (citation omitted). Furthermore, it is a well-established principle that courts of equity aid the vigilant, not those who have slept upon their rights. See SMDfund, Inc. v. Fort Wayne-Allen Cnty. Airport Auth., 831 N.E.2d 725, 729 (Ind. 2005), cert. denied. Therefore, the Court must affirm the Department’s denial of Ms. Gibson’s 2007 refund claim because Ms. Gibson has not shown that the refund claim was timely filed or that her delayed filing was excusable.

SO ORDERED this _____ day of November 2012.

Thomas G. Fisher
Senior Judge, Indiana Tax Court

Distribution:

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