

STATE OF MICHIGAN
COURT OF APPEALS

MCLANE COMPANY INC,

Plaintiff-Appellant,

v

DEPARTMENT OF TREASURY,

Defendant-Appellee.

UNPUBLISHED

October 14, 2021

No. 354973

Court of Claims

LC No. 19-000056-MT

Before: SWARTZLE, P.J., and CAVANAGH and GADOLA, JJ.

PER CURIAM.

The Department of Treasury audited the tax returns of McLane Company, Inc. for tax years 2008 through 2010. The department eventually finished the audit in 2017, and, in February of that year, the department issued a final audit determination that reflected a total net credit to McLane of \$966,462 along with a check for that amount. McLane cashed the check, but unbeknownst to the company, that check reflected and included a prior-year overpayment credit of \$711,415 that the company had claimed in its 2011 return.

Appearing to recognize the issue this caused—i.e., the taxpayer received the benefit of the credit in its 2011 return, and also received the benefit of the same credit in the final audit determination check that it had received and cashed in 2017—the department formally adjusted McLane’s 2011 return. The department admitted that, with respect to how this credit was handled by the department, “some changes were made, but the taxpayer was not notified.” The department sent McLane a formal notice in February 2018 that the department was disallowing the overpayment credit on the 2011 return. This disallowance did not, however, result in McLane having to pay additional monies related to the 2011 return; rather, the disallowance resulted in a much lower overpayment credit that could be carried forward.

McLane challenged the department’s adjustment of the 2011 return in an informal conference, arguing that the department’s actions violated the four-year statute of limitations involving an assessed “deficiency” under the Revenue Act, MCL 205.27a(2). The referee disagreed, as did the department, and McLane sued the department in the Court of Claims.

The Court of Claims rejected both of McLane's claims. On the first count, the trial court concluded that the reduction of a credit that does not result in a tax deficit owed by the taxpayer cannot be a "deficiency" under the act. Although the term "deficiency" is not defined in the tax laws or regulations—an oversight that the Legislature or department should consider correcting—the trial court reviewed dictionary definitions and statutory context to interpret the term's meaning. The trial court concluded that, when the credit reduction results in a lower credit to carry forward to the next year, there is no deficiency to be paid by the taxpayer. Moreover, the trial court determined that the department had not issued an "assessment" with respect to the 2011 return. The trial court further rejected McLane's laches argument, explaining: "Plaintiff has largely not even refuted that it was no longer entitled to claim the \$711,415 that defendant reduced from the credit owed to plaintiff following defendant's issuance of a refund check to plaintiff at the end of the 2008-2010 MBT audit." As to the second count, the trial court determined that the 2018 adjustment was not a collateral attack on the audit.

This appeal followed, and the parties' respective positions are substantially the same as before the trial court. There are no material questions of fact, and the key issues on appeal are, like they were before the referee and trial court, questions of law. We agree with the trial court that the 2018 adjustment did not result in a "deficiency" under MCL 205.27a(2). The department disallowed a claimed credit (\$711,415) that, in effect, offset the department's earlier payment of an amount (\$966,462) that had included the value of that claimed credit (\$711,415).

What the department did can be understood by focusing on the primary effect versus the secondary effect of the department's action. The primary effect is the disallowance of a claimed credit. The secondary effect of the disallowance might—or might not—result in additional tax being owed by the taxpayer. Here, the disallowance did not result in additional tax being owed, in the sense that McLane did not have to cut a check to pay a tax deficit. It is, therefore, inaccurate to characterize this as an assessment of a "deficiency," because whether or not there is a tax deficit to pay is merely a potential secondary effect of the disallowance of the credit.

McLane's frustration with how the department handled this matter is understandable. It is often costly to comply with our tax laws under the best of circumstances—and these were not the best of circumstances, as most clearly evidenced by the department's lengthy delay in finishing the 2008-2010 audit and, most egregiously, its failure to explain that the check reflecting the total net credit from the audit included an overpayment credit from the 2011 tax return. But, for the reasons stated here as well as those more fully set forth by the trial court in its thorough and well-reasoned opinion, we conclude that summary disposition in favor of the department was proper.

Affirmed.

/s/ Brock A. Swartzle
/s/ Mark J. Cavanagh
/s/ Michael F. Gadola