

[Cite as *Kormanik v. Dept. of Taxation*, 2004-Ohio-7288.]

IN THE COURT OF CLAIMS OF OHIO

THEODORE KORMANIK :
 :
 Plaintiff :
 :
 v. : CASE NO. 2003-09475-AD
 :
 DEPARTMENT OF TAXATION : MEMORANDUM DECISION
 :
 Defendant :

: : : : : : : : : : : : : : :

{¶ 1} Plaintiff, Theodore Kormanik, operated a retail-business in Barberton, Ohio known as Kormanik’s Mens Wear. Due to sparse business sales, plaintiff directed his accountant to draft a letter to the Treasure, State of Ohio, requesting Kormanik’s Mens Wear be placed on a semi-annual sales tax collection schedule. This letter was sent to the Treasurer, State of Ohio on April 20, 1987. Plaintiff stated he then began to remit sales tax from his business on a semi-annual basis.

{¶ 2} On June 28, 1989, defendant, Department of Taxation, assessed plaintiff late charges of \$500.00 and a \$75.00 penalty for the delinquent filing of sales tax returns representing the periods, January 1988 through May 1988 and July 1988 through November 1988. Defendant sent plaintiff notice of this assessment to plaintiff’s retail business at 344 E. Tuscarawas Avenue in Barberton, Ohio. The assessment was not paid and defendant then certified the unpaid assessment for collection with the Attorney General, Revenue Recovery Section on January 29, 1990. The Revenue Recovery Section office received payment in full of the tax assessment of \$575.00, plus \$24.00 interest on June 13, 1990.

{¶ 3} On September 5, 2003, plaintiff filed a complaint in this court alleging the delinquent tax assessment issued against him by defendant was improper. With his complaint, plaintiff submitted a form document dated June 30, 1990. The document was issued by defendant and titled Application For Reimbursement of Additional Charge For Late Filing of Tax Returns. Plaintiff asserted he filed this application for reimbursement of his delinquent tax assessment with defendant. However, plaintiff maintained he was unsuccessful in his attempt at attaining any reimbursement. Plaintiff did not include any documents from defendant informing him of the actual disposition of his application for reimbursement. Plaintiff did not submit any evidence to establish he pursued the reimbursement matter any further past June 30, 1990, until he filed this complaint on September 5, 2003, seeking to recover the total amount of his tax assessment with penalties, \$599.00. Plaintiff also submitted the requisite material filing fee.

{¶ 4} Initially, defendant contended plaintiff has failed to state a claim cognizable in this court. Furthermore, defendant asserted plaintiff's claim was untimely filed pursuant to R.C. 2743.16 (the two-year statute of limitations for filing claims in this court). Defendant denied receiving, "a petition for reassessment or the filing of a refund claim" from plaintiff. Defendant explained, "[a]t the time of this assessment, the only method to claim abatement of additional charges and penalties was through the administrative procedures associated with the petition for reassessment." Plaintiff did not pursue any of these administrative remedies available. Defendant essentially contended plaintiff had administrative opportunities under R.C. 5739.13 to dispute his tax assessment and did not pursue the matter by invoking these procedures.

{¶ 5} Although it appears plaintiff is attempting to prosecute

this action under R.C. 5703.54¹, the court concludes the instant claim is barred by the two year statute of limitations expressed in R.C. 2743.16² Plaintiff's cause of action accrued more than ten

¹ R.C. 5703.54 states:

"5703.54 Action for damages by aggrieved taxpayer.

"(A) A taxpayer aggrieved by an action or omission of an officer or employee of the department of taxation may bring an action for damages in the court of claims pursuant to Chapter 2734 of the Revised Code, if all of the following apply:

"(1) In the action or omission the officer or employee frivolously disregards a provision of Chapter 5711., 5733., 5739., 5741., or 5747. of the Revised Code or a rule of the tax commissioner adopted under authority of one of those chapters;

"(2) The action or omission occurred with respect to an audit or assessment and the review and collection proceedings connected with the audit or assessment;

"(3) The officer or employee did not act manifestly outside the scope of the officer's or employee's office or employment and did not act with malicious purpose, in bad faith, or in a wanton or reckless manner.

"(B) In any action brought under division (A) of this section, upon a finding of liability on the part of the state, the state shall be liable to the taxpayer in an amount equal to the sum of the following:

"(1) Compensatory damages sustained by the taxpayer as a result of the action or omission by the department's officer or employee;

"(2) Reasonable costs of litigation and attorneys fees sustained by the taxpayer.

"(C) In the awarding of damages under division (B) of this section, the court shall take into account the negligent actions or omissions, if any, on the part of the taxpayer that contributed to the damages, but shall not be bound by the provisions of sections 2315.32 to 2315.36 of the Revised Code.

"(D) Whenever it appears to the court that a taxpayer's conduct in the proceedings brought under division (A) of this section is frivolous, the court may impose a penalty against the taxpayer in an amount not to exceed ten thousand dollars which shall be paid to the general revenue fund of the state.

"(E) (1) Division (A) of this section does not apply to advisory opinions or other informational functions of an officer or employee of the department.

"(2) Division (A) of this section does not authorize a taxpayer to bring an action for damages based on an action or omission of a county auditor or an employee of a county auditor.

"(F) As used in this section, 'frivolous' means that the conduct of the commissioner, or of the taxpayer or the taxpayer's counsel of record satisfies either of the following:

"(1) It obviously serves merely to harass or maliciously injure the state or its employees or officers if referring to the conduct of a taxpayer, or to harass or maliciously injure the taxpayer if referring to the conduct of the tax commissioner;

"(2) It is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law."

² R.C. 2743.16(A) states:

"2743.16 Statute of limitations; claimant must seek to have claim compromised or satisfied by state's insurance.

years prior to the filing of his complaint in this court. Consequently, plaintiff's claim is dismissed as untimely filed.

IN THE COURT OF CLAIMS OF OHIO

THEODORE KORMANIK	:	
Plaintiff	:	
v.	:	CASE NO. 2003-09475-AD
DEPARTMENT OF TAXATION	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

: : : : : : : : : : : : : : : :

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Theodore Kormanik
344 E. Tuscarawas Avenue

Plaintiff, Pro se

"(A) Subject to division (B) of this section, civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties."

Barberton, Ohio 44203

Thomas M. Zaino
Deputy Tax Commissioner
30 E. Broad Street 22nd Floor
Columbus, Ohio 43215

For Defendant

DRB/RDK/1aa
11/3
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