SUPREME COURT OF OHIO

International Business Machines Corp. v. Zaino

94 Ohio St. 3d 152 (Ohio 2002) · Decided January 30, 2002

SUMMARY

The Ohio Supreme Court held that a taxpayer seeking a refund of franchise taxes paid with its return must file an application for refund under Ohio Revised Code 5733.12(B). A petition for reassessment under Ohio Revised Code 5733.11 cannot be used to obtain a refund exceeding amounts paid toward the deficiency assessment, and the decision affirming the denial of IBM's refund was affirmed.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Pfeifer, J.; Moyer, C.J.; Douglas, J.; Resnick, J.; F.E. Sweeney, J.; Cook, J.; Lundberg Stratton, J.
JURISDICTION	Ohio
DECIDED	January 30, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	IBM appealed as of right to the Supreme Court of Ohio from the Board of Tax Appeals' affirmance of the Tax Commissioner's final determination.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Ohio
PARTIES	International Business Machines Corporation v. Zaino

TOPICS

tax refunds · tax court procedure · state and local tax · statutory interpretation · administrative law

PRACTICE AREAS

Ohio franchise tax · tax refunds · state tax procedure · administrative law

QUESTIONS PRESENTED

1. Whether a taxpayer seeking a refund of franchise taxes paid with its return may obtain the refund through a petition for reassessment under Ohio Revised Code section 5733.11, or must file an application for refund under Ohio Revised Code section 5733.12(B).

2. Whether IBM substantially complied with the refund-application requirement by requesting a refund in correspondence during the reassessment proceeding.

HOLDINGS

1. A petition for reassessment under Ohio Revised Code section 5733.11 is limited to the deficiency assessment and may refund only amounts paid toward that assessment; it cannot provide a refund of taxes paid with the original return. A refund of amounts paid with the return must be sought through an application for refund under Ohio Revised Code section 5733.12(B).
2. A taxpayer's failure to file the refund application required by Ohio Revised Code section 5733.12(B) is a failure to substantially comply with a specific procedural requirement, depriving the Tax Commissioner of jurisdiction to consider the refund claim.

KEY QUOTATIONS

> *“The question presented by this case is whether a taxpayer seeking a refund of an overpayment of franchise tax may seek that refund through a reassessment petition or whether the taxpayer must file an application for refund. We find that the law requires the filing of an application for refund.”* (153)

> *“To be eligible for a refund of either type requires the filing of an “application to refund.””* (155)

> *“IBM’s failure to file an application for refund under R.C. 5733.12(B) was a failure to substantially comply with a specific requirement.”* (155)

FACTUAL BACKGROUND

IBM's 1993 Ohio franchise tax return was audited, resulting in an increased assessment issued on February 19, 1997. IBM challenged the assessment through a petition for reassessment and later requested a refund of amounts it had already paid with its return. Although the Tax Commissioner accepted IBM's treatment of certain deferred tax accounts and cancelled the assessment, IBM never filed the separate refund application required by Ohio Revised Code section 5733.12(B).

PROCEDURAL HISTORY

After auditing IBM's 1993 Ohio franchise tax return, the Tax Commissioner issued an increased assessment. IBM filed a petition for reassessment, and the Commissioner later cancelled the assessment but denied IBM's request for a refund of amounts paid with its return. The Board of Tax Appeals affirmed, and the Supreme Court of Ohio affirmed the BTA's decision.

DISPOSITION

affirmed

CASES CITED

- USX Corp. v. Tracy, BTA Nos. 92-H-1479 and 92-H-1480 (Ohio Bd. Tax App. Jan. 22, 1999) (unreported)
- Lancaster Colony Corp. v. Lindley, 61 Ohio St. 2d 268, 271, 400 N.E.2d 905, 907 (1980)

- Am. Restaurant & Lunch Co. v. Glander, 147 Ohio St. 147, 70 N.E.2d 93 (1946)
- Akron Std. Div. of Eagle-Picher Industries, Inc. v. Lindley, 11 Ohio St. 3d 10, 12, 462 N.E.2d 419, 420 (1984)

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