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Summary of State, Dep't of Taxation v. Masco Builder, 127 Nev. Adv. Op. 66

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TAX LAW: TAX REFUNDS IN CASE OF OVERPAYMENT

Summary

The Court determined two issues: (1) whether a taxpayer may seek interest on an overpayment of taxes under NRS § 360.2937 after initially failing to affirmatively request such interest; and (2) whether the Department of Taxation may withhold interest on tax refunds while determining whether a taxpayer's overpayment was intentional or careless.

Disposition

According to the plain meaning of applicable tax law, a taxpayer does not waive its right to seek overpayment interest by initially failing to request it. Furthermore, the Department may not withhold interest after failing to make a timely determination of intentional or careless overpayment.

Factual and Procedural History

After the Department of Taxation rejected Masco's initial claim for a refund on overpaid taxes, Masco brought the matter before an administrative law judge (ALJ), who determined that Masco was entitled to the refund. The Tax Commission reversed the ALJ's decision, but Masco then appealed to the district court, which reversed again. The Department made a final appeal to the Nevada Supreme Court, where the district court's holding was affirmed in Masco's favor.²

Thereafter, Masco sought to obtain its refund *with interest*. Masco filed a motion in the district court, and thereby successfully established that it was entitled to pre- and post-judgment interest on the refund amount. The Department appealed the district court's ruling, arguing that (1) Masco waived its right to seek interest by failing to do so in its initial refund claim, and (2) pursuant to NRS § 372.665, Masco was not entitled to interest if it intentionally or carelessly overpaid taxes, a determination which the Department had not yet been able to make.

Discussion

Masco did not waive its right to seek interest by failing to demand interest in its initial refund claim

The Department argued that because Masco did not request interest on its tax refund before the ALJ, it waived its right to seek interest at a later date. Considering the plain meaning of the controlling tax law, which states that "interest *must be paid* upon an overpayment of any tax,"³ the Court found that nothing in the applicable statutes requires a taxpayer to affirmatively request interest before the ALJ, or even before the Department itself. Therefore, since Masco

¹ By Brady Briggs.

² *State Dep't of Taxation v. Masco Builder Cabinet Grp.*, 127 Nev. ____, 265 P.3d 666 (2011).

³ NEV. REV. STAT. § 372.660 (2011) (emphasis added); *see also* NEV. REV. STAT. § 360.2937 (2011).

was not required to make such a request, it was appropriate for Masco to later seek statutory interest in the district court.

The Department may not withhold interest on tax refunds when it has failed to timely make a determination under NRS 372.665

Under NRS § 372.665, the Department may not pay interest on a tax refund if it “determines that any overpayment has been made intentionally or by reason of carelessness.”⁴ The Department contended that the district court did not have authority to award interest until the Department made this preliminary determination regarding whether any interest was required. The Court reasoned that because “the issues of intentional or careless overpayment are inextricably intertwined with the reasons for the claim,” the determination under NRS § 372.665 must be made during the Department’s initial review of the taxpayer’s claim, “and no later than the date that the refund amount is determined.” Accordingly, the Department failed to timely determine whether Masco’s overpayment was intentional or careless, and may not now withhold interest properly awarded by the district court.

Conclusion

Masco did not waive its right to seek interest on its tax refund by initially failing to request it before the ALJ. Furthermore, the Department of Taxation failed to timely determine whether it could refuse to pay interest to Masco on the basis of intentional or careless overpayment. Therefore, Masco is entitled to its tax refund with interest.

⁴ NEV. REV. STAT. § 372.665 (2011).