

BEFORE THE TAX APPEAL BOARD OF THE STATE OF DELAWARE

SEASIDE VILLAGE, INC. )  
Petitioner, )

v. )

DIRECTOR OF REVENUE )  
Respondent )

Docket No. 664

Before: Joseph S. Yucht, Esquire, Chairman, Cyric W. Cain, Jr.,  
Harry B. Roberts, Jr., Nettie C. Reilly,  
Board Members.

John A. Sergovic, Jr., Esquire for Petitioner.

John P. Fedele, Esquire, Assistant Attorney General for Respondent

DECISION AND ORDER

Cyric W. Cain, Jr: This case involves the filing of two refund claims by Petitioner claiming an over-payment of corporation income taxes.

The basis of each claim is the carry back of a net operating loss. Both claims were denied by the Respondent, because, according to the Respondent they were not timely filed.

Petitioner is a Delaware corporation with its principal place of business in Bethany Beach.

The facts in the case are not in dispute.

Questions involved.

1. Does the period of limitations within which a corporate taxpayer may file its claim for refund (based upon a net operating loss) start to run from the date the corporate taxpayer files its original tax return or does it start to run from the date the corporate taxpayer files its amended tax return?

Petitioners state that the period of limitations commences to run on the date a taxpayer files its amended return.

The Board finds this interpretation unfounded in State Law. To quote the words of the Respondent "if Petitioner's contention

were valid it would make subsection 1911 (a) totally meaningless since a refund claim could be filed at any time. Under Petitioner's logic Petitioner could file an amended return in the year 2000, showing a refund due for the fiscal year ending July 31, 1971.

2. Does the period of limitations within which a corporation taxpayer may file its claim for refund (based upon a net operating loss) start to run from the date the corporate taxpayer files its original tax return or does it start to run from the end of taxpayer's taxable year in which the net operating loss occurred?

Petitioner takes the position that the period of limitations does not start to run respecting a claim for refund until the close of the tax year in which the net operating loss occurs.

Again, the Board finds this interpretation unfounded.

Subsection 1911 (a) provides:

"Where there has been an overpayment of any tax imposed by this chapter for any income year . . . No . . . refund shall be allowed after the expiration of 6 months following the expiration of the period during which the Secretary of Finance may, under Par 1908 of this title, make an assessment . . . of additional tax for such a year."

3. Is not a taxpayer's claim for refund deemed timely filed (under Sec. 1911, Title 30, of the Delaware Code) when it is based upon a change or correction of the taxable income reported for Federal income tax purposes by the taxpayer and said claim is filed within one year from the date such change or correction is agreed to?

30 Del. C., Sec. 1911 (b) provides.

"(b) A claim for refund shall be deemed to be filed within the period prescribed in subsection (a) of this Section if based upon a change or correction of the taxable income reported for Federal income tax purposes and is filed within one year after the taxpayer has agreed to such changes or corrections."

The key phrases in 30 Del. C, Section 1911 (b) are: based upon a change or correction and taxpayer has agreed.

The Board in its review does not find sufficient documentation of any change or correction as stated by the Petitioner and therefore 30 Del. C., Sec. 1911 (b) does not apply.

Accordingly, the Board rules in favor of the Respondent.  
The Petition is denied.

IT IS SO ORDERED.

Cyril W. Cain  
Joseph J. Yuko  
Nettie E. Reilly  
Harold B. Roberts

Dated: December 18, 1979

SYNOPSIS

DOCKET NO. 664

TAX SEGMENT: CORPORATION INCOME TAX  
Refund - Statute of Limitation

ISSUE: Does the period of limitation within which a corporate taxpayer may file its claim for refund (based upon a net operating loss) start to run from the date the corporate taxpayer files its original return or does it start to run from the date the corporate taxpayer files its amended return? Or does it start to run from the end of taxpayer's taxable year in which the net operating loss occurred?

TAB DECISION: The Tax Appeal Board in concluding its review did not find sufficient documentation based on the key phrases of 30 Del. C. § 1911 (b) of any change or correction as stated by the petitioner and; therefore, this section does not apply. Accordingly the Board ruled in favor of the Respondent and petition was denied.

DECISION: For Respondent

DECISION DATE: December 18, 1979