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TEXAS WORKERS COMPENSATION COMMISSION
7551 METRO CENTER DR. STE 100
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7 of 18 DOCUMENTS

NAME: IN RE: * * *

NUMBER: HEARING NO. 43,969

COURT: COMPTROLLER OF PUBLIC ACCOUNTS OF THE STATE OF TEXAS

CITE: 2004 *Tex. Tax LEXIS 122*

DATE: May 14, 2004

PANEL: [*1]

ELEANOR H. KIM, Chief Administrative Law Judge

COUNSEL: ELIAS V. LORENZANA, JR., Representing Tax Division

* * *, Representing Claimant

OPINIONBY: KIM

TAXPAYER NO.: * * *

AUDIT OFFICE: * * *

AUDIT PERIOD: January 1, 1998 Through December 31, 2002

SALES AND USE TAX/RFD

COMPTROLLER'S DECISION

PRELIMINARY DISCUSSION:

At Claimant's request, this Decision is based on the written submission of the parties.

Official notice has been taken of all records of the Comptroller's office that pertain to Claimant and the issues involved in the case. Unless otherwise indicated, all Section references are to Title 2 of Texas Tax Code and all references to Rules are to Title 34, Texas Administrative Code.

CLAIMANT'S CONTENTION:

Claimant contends that it could have avoided the statute of limitations problem if it had been given correct advice by the Comptroller's office.

FINDINGS OF FACT:

1. Claimant, * * *, files its sales and use tax returns on a yearly basis.
2. On January 8, 2003, Claimant filed a tax refund claim for sales and use tax in the amount of \$ * * *. With its refund claim, Claimant submitted invoices, checks, and summary schedules, and the dates of the invoices for [*2] which Claimant asserted that it paid taxes in error covered the period of December 1, 1998 through October 31, 2002. The Comptroller's auditor accepted the refund claim as timely (i.e., within the statute of limitations).
3. On February 5, 2003, Claimant filed a second tax refund claim for sales and use tax in the amount of \$ * * *. With its refund claim, Claimant submitted invoices, checks and summary schedules, and the dates of the invoices for which Claimant asserted that it paid taxes in error covered the period of January 1, 1999 through May 31, 2002. The

Comptroller's auditor accepted this refund claim as timely, and because the refund period fell within the first refund claim's refund period (Finding of Fact No. 2), the auditor combined the two claims and handled them as one assignment covering the period of December 1, 1998 through October 31, 2002.

4. The auditor's Record of Audit Planning, Activities and Results for Refund Assignments ("Audit Plan") indicates that during the verification of the combined refund claims, on April 23, 2003, Claimant submitted a third refund claim for sales and use tax in the amount of \$ * * *. The dates of the invoices for which Claimant asserted [*3] that it paid taxes in error covered the period of October 1, 1999 through December 31, 2002. The auditor accepted this refund claim as timely. Because the refund period of the third claim overlapped the refund period of the combined two claims that she was in the process of verifying, the auditor merged the claim into her existing assignment for a total claimed amount of \$ * * * with a refund period covering December 1, 1998 through December 31, 2002. The Comptroller's sales and use tax records for taxpayers are maintained based on reporting periods; thus, the auditor officially identified Claimant's "refund period" as January 1, 1998 through December 31, 2002, based on Claimant's yearly filer status.

5. The auditor noted in her audit plan that on April 30, 2003, upon completion of the verification, she sent her preliminary refund schedules to Claimant and that within one day, Claimant stated its agreement with the refund schedules. The auditor also noted in her audit plan that on May 2, 2003, she had a discussion with Claimant regarding statute of limitations issues. Claimant asked if it could add invoices paid during the period of January 1, 1998 and November 30, 1998 ("1998 invoices") [*4] that were not previously identified or produced. After speaking with her supervisor, the auditor advised Claimant that the invoices would be outside the limitations period and that she could not consider them in her refund assignment.

6. On May 6, 2003, the auditor sent to Claimant a refund package, detailing the transactions that she disallowed and notifying Claimant of the reduction of the total tax amount of \$ * * * to \$ * * *. On June 30, 2003, the Comptroller's auditor issued the official denial letter containing the standard clause outlining Claimant's right to claim a refund hearing on the denial. Neither the refund package nor the denial letter that identified the disallowed transactions contained any reference to the 1998 invoices.

7. On July 3, 2003, Claimant filed a Statement of Grounds requesting a refund hearing. The Statement of Grounds consists of one paragraph wherein Claimant merely states that the auditor failed to consider additional documentation that was available and that the estimated tax associated with the additional documentation was approximately \$ * * *.

8. In its pleading dated April 7, 2004, Claimant states it was in agreement with the auditor's disallowance [*5] of refund made to Claimant's written refund claims of January 8, 2003, February 5, 2003 and April 23, 2003, but the Statement of Grounds was filed as a refund request for taxes paid on the 1998 invoices that the auditor did not consider.

CONCLUSIONS OF LAW AND DISCUSSION:

The Tax Division frames the issue to be whether an oral claim for refund of taxes paid on the 1998 invoices is within the statute of limitations. The Tax Division argues that Claimant's oral request for a refund of taxes paid on the 1998 invoices should be denied because it "was not in compliance with Rule 3.325(a)(4) [that it be in writing] and was, more importantly, out of the statute of the limitations period." Claimant seeks relief from the Tax Division's affirmative defense of the statute of limitations by arguing that it could have avoided the statute of limitations problem had it received correct advice and "had [its original] refund been processed and an official notice of denial received prior to the effective date of HB2425."<i> Claimant's contention is without merit and should be rejected.

Section 111.104(a) authorizes the Comptroller to refund tax if the Comptroller finds that the tax has been [*6] "unlawfully or erroneously collected." Obviously, before such a determination can be made, the Comptroller has to be made aware of the possibility that tax may have been unlawfully or erroneously collected. This notice occurs when a taxpayer files a refund claim. The refund statute contains mandatory prerequisites that a taxpayer must comply with in filing a refund claim, and one of them is that the claim must be in writing. See Sections 111.104(c)(1). The Comptroller restates this statutory requirement in Rule 3.325(a)(4).

The evidence in the record establishes that Claimant and the auditor discussed the possibility of including the 1998 invoices in the verification assignment, but the auditor declined to do so. See Finding of Fact 5. There is no evidence that Claimant had submitted a written refund claim for taxes paid on the 1998 invoices to the auditor, and Claimant does not dispute the Tax Division's representation of the fact that an oral request had been made. Claimant even admits in its pleading dated April 7, 2004 that a written refund request was not filed until after Claimant's receipt of the June 30, 2003 denial letter.<ii> Because Claimant did not submit a written claim [*7] prior to the issuance of the June 30, 2003 denial letter, it is concluded that the 1998 invoices were never within the auditor's scope of review. An oral refund request has no legal relevance whatsoever in the Comptroller's administration of tax refunds for the state, regardless of

how specific or correct in substance the oral request may be. The denial letter offering Claimant the right to request a refund hearing to appeal the auditor's action pertained solely to the partial denial of Claimant's written refund claims filed on January 8, 2003, February 5, 2003 and April 23, 2003. Upon receipt of the denial letter, Claimant had no disagreement with any of the disallowed transactions (See Finding of Fact Nos. 5 and 8); thus, no contested case existed. The auditor's refusal to review the 1998 invoices, and Claimant's objection to that refusal, are as a matter of law outside the jurisdiction of this refund hearing. Petitioner's appeal based solely on the auditor's inaction in connection to the 1998 invoices was therefore inappropriate and should have been dismissed at the time of its request.

It appears from the pleadings that Claimant intended its Statement of Grounds dated July 3, [*8] 2003 to constitute its written refund claim. <iii> Rather than dismissing the hearing outright on the basis of no contested case and requiring the agency to review the July 3, 2003 refund claim separately outside this proceeding, the issue will be addressed herein for the sake of efficiency. <iv> The acceptance of Claimant's Statement of Grounds as Claimant's intended written claim for a refund does not result in any relief for Claimant because two legal obstacles exist.

First, although the Tax Division did not raise the defense, the written statement is facially insufficient to be considered a refund claim under Section 111.104(c)(2), as amended in 2003. For all refund claims filed on or after June 20, 2003, Section 111.104(c)(2) requires the written request to "state fully and in detail each reason or ground on which the claim is founded." Given that a written refund claim constitutes notice to the Comptroller, the statute requires a claimant to provide in that notice reasons for a refund with sufficient clarity and detail that would enable the agency to determine the merits and validity of the claim. As indicated by Finding of Fact No. 6, Claimant's Statement of Grounds (i.e., intended [*9] refund claim) clearly falls short of that requirement, <v> and the consequence of that defect is that it is not an acceptable refund claim. See STAR Accession No. 200306964T (June 23, 2003) (Answer to the third question provides the following: "If a refund claim is insufficient, it will not be accepted as a valid refund claim.").

Second, the written statement, even if it were treated as a valid claim, was not timely because it was filed after the expiration of the statute of limitations. A written refund claim must be filed "before the expiration of the applicable limitation period as provided by this code or before the expiration of six months after a jeopardy or deficiency determination becomes final, whichever period expires later." See Section 111.104(c)(3). In Claimant's case, no jeopardy or deficiency determination is involved, so Claimant must show that its claim was filed within four years from the date the tax was due and payable. See Sections 111.107 and 111.201; See also Rule 3.325(a)(1). Under the authorities of Sections 151.401 and 151.405, the Comptroller has promulgated Rule 3.286(f) wherein "due and payable" dates are established (i.e., monthly, quarterly, or yearly) [*10] based on the amount of taxes reported. Claimant is a yearly filer, and had it not paid sales taxes to its vendors, Claimant would have had to accrue and remit those taxes on the 1998 invoices on its 1998 sales and use tax return, which was due and payable on January 20, 1999. <vi> Therefore, the four-year statute of limitations for taxes paid on the 1998 invoices expired on January 20, 2003. Claimant's written statement of July 3, 2003 was filed several months beyond the statutory deadline.

Claimant argues that it could have avoided the 2003 law changes if the denial letter had been issued sooner and contends it should be given relief because of detrimental reliance. This argument is speculative, but it is also inconsistent with evidence in the record. Had the auditor issued the denial letter sooner allowing Claimant to avoid the sufficiency of the refund claim issue noted above, Claimant would have still encountered the statute of limitations problem. The auditor's audit plan indicates Claimant's oral request occurred on May 2, 2003, whereas Claimant alleges in its pleading dated April 7, 2004 that it sought a refund for taxes paid on the 1998 invoices in April of 2003. Either way, [*11] the oral refund request occurred after the statute of limitations had already expired; thus, even if the auditor had directed Claimant to submit its request in writing on the day the availability of the 1998 invoices were first raised by Claimant, the refund claim would have been outside the statute of limitations. Claimant identifies another employee of the agency who Claimant alleges gave incorrect advice to its detriment, but admits the discussion occurred after the auditor's refusal to review the 1998 invoices, which means the alleged conversations took place after the statute of limitations had already expired. Consequently, there is absolutely no evidence of detrimental reliance. <vii> The statutory requirements that a refund claim must be in writing and that it must be filed within the limitations period have been in effect since 1961 <viii> and were untouched by the 2003 law changes; therefore, Claimant's argument that a different outcome would have resulted if the agency had acted quicker is without merit. Failing to file a written claim within the applicable statute of limitations constitutes a waiver of the right to demand an overpayment. See 111.104(d) and Rule 3.325(a)(6).

[*12]

RECOMMENDATION:

The denial of the refund claim related to Claimant's refund filings of January 8, 2003, February 5, 2003 and April 23, 2003 should be upheld in its entirety and the Tax Division's denial of the refund claim for taxes paid on the 1998 invoices should also be upheld.

Signed April 16, 2004.

ORDER OF THE COMPTROLLER

The above decision of the Administrative Law Judge is approved and adopted in all respects. This decision becomes final twenty-three (23) days from the date of this Order.

If a rehearing is desired, a Motion for Rehearing must be filed with the Administrative Law Judge no later than twenty-three (23) days after the date of this Order, and must state the grounds upon which the motion is based.

RENDERED and ISSUED May 14, 2004.

CAROLE KEETON STRAYHORN, Texas Comptroller

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