

Ohio: Court rejects amended return on a consolidated basis



David M. Kall | Tuesday, November 15, 2016

In the case [New York Frozen Foods, Inc. v. Bedford Hts. Income Tax Bd. of Rev.](#), the Ohio Supreme Court affirmed the Board of Tax Appeals (“BTA”), which denied the company’s attempt to obtain a tax refund in the amount of \$698,294. The court’s rationale differs from that of the BTA, but nevertheless, the denial stands.

Background

New York Frozen Foods, Inc.’s (Frozen Foods) has its general offices in Bedford Heights, Ohio. It sells frozen food products, like garlic bread, and other items, such as the Marzetti salad dressing brand, in supermarkets.

For the tax years 2005, 2006, and 2007, Frozen Foods timely filed separate-entity municipal-income-tax returns, which it then amended on a consolidated basis on March 9, 2010. For those same tax years, Frozen Foods filed federal income-tax returns with its affiliates on a consolidated basis.

The Regional Income Tax Authority, known as RITA, is Bedford Heights’ tax administrator. When Frozen Foods submitted its amended tax returns, RITA rejected them, and the refund claim. The company appealed to the Bedford Heights Income Tax Board of Review (review board), which affirmed RITA’s decision, on November 9, 2011. Citing two Bedford Heights ordinances, along with a section of RITA’s rules and regulations, the review board concluded that after the due date for filing the original return, a taxpayer is not permitted to “change the method of accounting, or the apportionment of net profits nor the method of filing.”

Frozen Foods then appealed to the BTA. The BTA agreed with Frozen Foods on the substance of its case, opining that filing an amended consolidated return did not involve a prohibited change in the method of accounting or apportionment. Even so, the BTA affirmed the review board’s denial, citing a RITA rule amendment from 2009 that explicitly prohibited a change to consolidated filing on an amended return. Consequently, Frozen Foods took its case to the Ohio Supreme Court.

The court’s rationale

The court upheld the BTA’s central holding that Frozen Foods may not file an amended return on a consolidated basis. However, the court’s decision rejects the BTA’s determination that Frozen Foods’ switch from the use of separate returns to a consolidated return did not constitute a change in the method of accounting, which the amended-returns provision of Bedford Heights’ Codified Ordinance barred.

The court’s reasoning was grounded in the language of the ordinance, and the meaning of the term “change in method of accounting” in federal law. First, the court pointed out that the language of the ordinance “supports a restrictive view of the circumstances that justify amended returns.” Because the amended return did not seek a refund of overpaid taxes or claim a forgotten deduction or credit, but instead used a different approach in the computation of taxable income, Frozen Foods’ effort was “within the intended scope of a prohibited change in the method of accounting.”

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Second, with respect to federal law, the court asserted that “the treasury regulations support a more expansive view of what constitutes a change in the method of accounting,” and then examined the factors to be assessed when considering whether a change is a “change in the method of accounting.”

The court therefore held that “the change from filing a separate return to filing a consolidated return constitutes a change in the method of accounting prohibited under the Bedford Heights ordinance.”

In addition, the court examined whether state law “override[s] the city’s power to bar a change of accounting or apportionment method when filing an amended return,” and determined that it did not. “[T]o prohibit the city from refusing the amended return would constitute an additional limit on [its] taxing authority that was not explicitly stated in [Ohio law].”

The last matter the court addressed was Bedford Heights’ policy justification for denying Frozen Foods’ refund claim, which is that its “fiscal stability depended upon the finality of the filing election, as the present case demonstrates.” In accepting the policy, the court emphasized the distinction between a re-filing needed to correct errors or omissions, in which case the city would grant relief, and a re-filing generated by a desire to use a substantially different method of reporting and computing income, which the refund ordinance precluded.



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