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State Tax Return

BEFORE APPEALING A TAX ASSESSMENT, KNOW THE RULES (LEST YOUR DAY IN COURT BE A SHORT ONE)

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Early in the following sequence of events, Carl Wagenknecht unwittingly forfeited his right to have anyone consider his appeal of an Ohio income tax assessment.

The Facts: Mr. Wagenknecht, an attorney, filed his Ohio income tax return for the 1996 tax year in a timely manner and remitted to the state the amount of tax shown due on the return. Thereafter, the Internal Revenue Service audited Mr. Wagenknecht and increased his 1996 federal adjusted gross income by \$308,600. This adjustment had the derivative effect of increasing Mr. Wagenknecht's 1996 Ohio income tax liability, thereby triggering the provisions of R.C. § 5747.10. The statute provides that when a federal income tax audit adjustment affects a taxpayer's Ohio income tax liability,

the taxpayer shall file an amended return with the tax commissioner in such form as the commissioner requires. The amended return shall be filed not later than sixty days after the adjustment has been agreed to or finally determined for federal income tax purposes or any federal income tax deficiency or refund, or the abatement or credit resulting therefrom, has been assessed or paid, whichever occurs first.

Notwithstanding the requirements of R.C. § 5747.10, Mr. Wagenknecht failed to file an amended Ohio income tax return for the 1996 tax year. A number of years later, after having learned of the federal adjustment relating to Mr. Wagenknecht's 1996 federal adjusted gross income, the Ohio Department of Taxation ("Department") issued an assessment to Mr. Wagenknecht for the additional Ohio income tax due on the federal adjustment. Believing the federal adjustment and, therefore, the Ohio assessment to be erroneous, Mr. Wagenknecht promptly filed a petition for reassessment. Three months later, the Department dismissed the petition because Mr. Wagenknecht had not complied with the requirements of R.C. § 5747.13, which reads in part:

(E) The portion of an assessment that must be paid upon the filing of a Petition for Reassessment shall be as follows:

(2) If the taxpayer or qualifying entity that is assessed failed to file, prior to the date of issuance of the assessment, *** an amended return *** for the taxable year at issue, *** payment of the assessment, including interest but not penalty, is required ***.

Mr. Wagenknecht appealed the Department's final determination to the Ohio Board of Tax Appeals, which, on December 21, 2007, affirmed the determination. The matter was then appealed to the Ohio Supreme Court.

Analysis: Mr. Wagenknecht argued to the Board of Tax Appeals and to the court that the 1996 federal audit adjustments had not been agreed to or finally determined for federal income tax purposes at the time the Ohio assessment was issued. That being the case, he argued, he was not required under R.C. § 5747.10 to file an amended return at that time. In support of this argument, Mr. Wagenknecht referred to two cases pending in federal court.

The first case involved an action filed in the United States District Court for the Northern District of Ohio. With regard to this case, the Ohio court noted that the district court had dismissed that part of Mr. Wagenknecht's complaint that related to the amount of his federal tax liability – indicating that jurisdiction related to his income tax liability lies solely in the United States Tax Court – and that the Sixth Circuit Court of Appeals had affirmed this conclusion.

With regard to the remaining case – the tax court case – the Ohio court noted that on July 29, 2008, the tax court decided that Mr. Wagenknecht's underlying tax liability was not properly before the court.

While neither of these judicial developments had occurred at the time Mr. Wagenknecht filed his petition for reassessment, that fact ultimately proved immaterial because of the Commissioner's determination that the I.R.S. had assessed the federal income tax deficiency resulting from the 1996 federal adjustments prior to the issuance of the Ohio assessment. Under R.C. § 5747.10, that fact alone required Mr. Wagenknecht to file an amended Ohio income tax return. Since he had not done so, the court concluded that payment of the Ohio assessment was a condition precedent to consideration of his petition for reassessment.

The court also rejected Mr. Wagenknecht's alternative claim that he had submitted an affidavit to the Department in April 2000 and that this affidavit was tantamount to the filing of an amended return. Without noting that the affidavit would have been untimely even if accepted as a substitute for an amended return, the court rejected it as not being "in such form as the Commissioner requires."

Summary: By failing to understand and comply with the relevant procedural rules under Ohio law, the taxpayer in this case forfeited his right to have a reviewing court examine the propriety of the underlying tax assessment he considered erroneous. A procedural foot fault can invalidate an otherwise valid tax claim. The tax laws of the other states in the Union present similar challenges.



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