

D & S DENTAL LABORATORY INC 95CV1807 051396 DANE CTY CIR CT

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STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 14

DANE COUNTY

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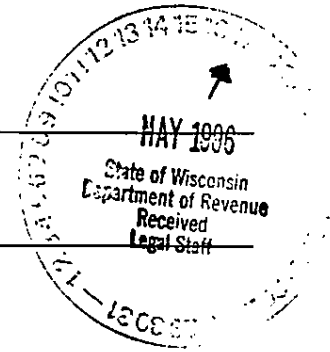
D & S DENTAL LABORATORY, INC.,
Petitioner,

v.

Case No. 95 CV 1807

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WISCONSIN DEPARTMENT OF
REVENUE,
Respondent.



DECISION AND ORDER

BACKGROUND

D & S Dental Laboratory, Inc. (Petitioner) has petitioned the court pursuant to §227.53 Wis. Stats., to review the June 14, 1995, Wisconsin Tax Appeals Commission (Commission) ruling which granted the Wisconsin Department of Revenue's (Respondent) motion to dismiss. The Commission stated that it lack jurisdiction to consider Petitioner's claim for a refund for sales and use taxes paid following an assessment by Respondent because the deadline imposed by §77.59(4)(a), Wis. Stats., (1991-92)¹, had begun to run on August 1, 1991 rather than on August 6, 1991. After review of the applicable law, I conclude that the claim was not timely filed and the Commission lacked jurisdiction to consider the refund claim.

FACTS

The facts are not in dispute. Respondent issued a field audit assessment of sales tax to Petitioner on August 1, 1991. Petitioner paid the assessment on August 6, 1991. On

¹All references to §77.59(4)(a) are to Wis. Stats. 1991-92 unless otherwise noted.

August 6, 1993, Petitioner filed a refund claim with Respondent for the amount paid pursuant to the assessment. Petitioner received a letter from Respondent dated September 13, 1993, stating that the refund claim had not been timely filed under §77.59(4)(a), Stats. Petitioner file a Petition for Review with the Commission on February 3, 1994, and Respondents filed a Motion to Dismiss. On June 14, 1995, the Commission ruled that the two year period to file a claim for refund under §77.59(4)(a), Stats., began on August 1, 1991, and ended on August 1, 1993, thereby causing the Commission to lack jurisdiction to hear the Petition for Review.

STANDARD OF REVIEW

There are three levels of deference that a court may give an administrative agency's statutory interpretations: 1) "great weight" if the agency's experience, technical competence, and specialized knowledge aid the agency in its interpretation and application of the statute; 2) "due weight" standard where the agency's decision is very nearly one of first impression; and 3) "no weight" standard where the issue is clearly one of first impression and where the agency has no special experience in determining the issue. Kelley Co., Inc. v. Marquardt, 172 Wis. 2d 234, 244, 493 N.W. 2d 68 (1992). However, an agency interpretation of an unambiguous statute is entitled to no deference. City of Milwaukee v. Lindner, 98 Wis.2d 624, 634, 297 N.W.2d 828 (1980). Further, an administrative agency's decision that deals with the scope of its own power is not binding. Loomis v. Wisconsin Personnel Commission, 179 Wis. 2d 25, 30, 505 N.W.2d 462 (Ct. App. 1993).

DECISION

The sole issue before the court is whether Respondent's interpretation of the starting date for the two year time period to file a refund claim under §77.59(4)(a), Stats. is correct. This is a question of law regarding an unambiguous statute. Therefore, the court will give Respondent's interpretation no deference.

The relevant language of §77.59(4)(a) states: "A claim for refund . . . may be made within 2 years of the determination of a tax assessed by . . . field audit and paid if the tax was not protested by the filing of a petition for redetermination." Petitioner urges that:

the meaning of the statute is clear in that the statute requires that the two related elements of (1) an assessment, and (2) payment, are essential elements that must occur for a taxpayer to fall within its scope, and "if" the condition that a taxpayer has not protested the assessment by filing a petition for redetermination has occurred, then the taxpayer has two years from the date the tax was "assessed . . . and paid." (Petitioner's Brief at 6)(emphasis added).

Following Petitioner's reasoning, the two year time limit in this case did not start to run until after Petitioner paid the assessment on August 6, 1991. Therefore, the August 6, 1993 refund claim would be timely.

In contrast, Respondent urges that "the Commission interpreted the phrase 'and paid' as imposing an explicit requirement that the tax assessed by field or office audit must be paid as a **precondition** to filing a refund claim within two years from the date of the field or office audit assessment." (Respondent's Brief at 4)(emphasis added). Therefore, the August 6, 1993 refund claim would not be timely.

The court does not agree with either party's reading of §77.59(4)(a). Section 77.59(2), which discusses determinations, states in relevant part:

The determination shall be presumed to be correct and the burden of proving it to be incorrect shall be upon the person challenging its correctness. A determination by the department in a field audit becomes final at the expiration of the appeal periods provided in sub (6), and the tax liability may not be subsequently adjusted except as provided in sub (4)(a), (8) or (8m). (Emphasis added).

Thus, once a determination of tax liability is made, that determination is final unless one of three exceptions applies. One of the three exceptions is §77.59(4)(a), which states: "A claim for refund . . . may be made within 2 years of the determination of a tax assessed by . . . field audit and paid if the tax was not protested by the filing of a petition for redetermination." Read in light of the relevant portions of §77.59(2), the "and paid" language in §77.59(4)(a) indicates to the court that what is being discussed is how a tax liability will be allowed to be adjusted. The court therefore finds that the "and paid" language does not relate to the original payment of an assessment as suggested by Petitioner. Having so found, the court concludes that the refund claim was not timely filed and the Commission properly granted the motion to dismiss for lack of jurisdiction.

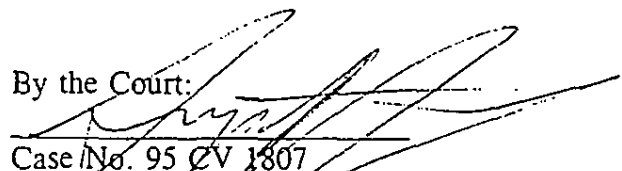
CONCLUSION

For the reasons stated above, the court AFFIRMS the Wisconsin Tax Appeals Commission's June 14, 1995, ruling.

IT IS SO ORDERED.

Dated this 15th day of May, 1996.

By the Court:


Case No. 95 CV 1807
George A. W. Northrup, Judge
Circuit Court Branch 14

cc: AAG F. Thomas Creeron ✓
Attorney Richard A. Latta