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STATE OF WISCONSIN

CIRCUIT COURT
Branch 2

EAU CLAIRE COUNTY

NATIONAL PRESTO INDUSTRIES, INC.,

Petitioner,

DECISION AND ORDER

vs.

Case No. 96CV459

WISCONSIN DEPARTMENT OF JUSTICE,

Respondent.

National Presto Industries, Inc. (hereinafter Presto) is a Wisconsin corporation with its principal place of business located in Eau Claire, Wisconsin. Presto is subject to Wisconsin franchise and income taxes and was so at the times material to this dispute.

In 1992, a field audit of Presto's taxable years 1985, 1986 and 1987 was conducted by the Wisconsin Department of Revenue (hereinafter State). On November 4, 1992 State issued a notice of field audit action which, reported the three years separately, but which combined them for the purposes of computing a net figure. Specifically, Presto was found to have underpaid taxes for 1985 and 1986, and interest at the rate of 12% was assessed in favor of the State and against Presto separately on the amounts owed for each year. State determined Presto substantially overpaid taxes in year 1987, and interest was computed against the State and in favor of Presto at the rate of 9% against that amount. When all was said and done, State issued Presto a refund check for the 1987 overpayment plus interest owed, less Presto's computed underpayments for 1985 and 1986 plus interest Presto owed.

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During September 1994, Presto concluded the State erred on its calculation and determination of Presto's taxes for 1985 only, and Presto on September 13, 1994 notified the State it was claiming a refund for the year 1985.

On November 10, 1994, State responded to the refund claim by denying it on the basis that under §71.75(4), Stats., no refund shall be made for ". . . any year that has been the subject of a field audit if the audit resulted in a refund or no change to the tax owed or resulted in an assessment that is final." The letter went on to state that because the audit report of November 4, 1992 resulted in Presto's receipt of a refund, there was no assessment and §71.75(5), Stats., was inapplicable. The letter contained no other information with regard to any rights Presto had to appeals or further review of this decision.

For reasons that are not entirely clear, Presto did nothing in response to this letter from State until June 13, 1995 when it wrote a letter taking issue with State's conclusions as set forth in its November 10, 1994 denial. (In fairness Presto claims it was confused about the import of the November 10, 1994 letter, because of what it felt was conflicting information provided by the State in tax publications published during the same time. Presto also claims it was misled by the State's failure to provide appellate warning or information in the denial letter.)

In any event, from June 13, 1995 through July 17, 1995, Presto and the State exchanged letters which essentially claimed the other was incorrect in its interpretation of Wisconsin tax law. Presto ultimately filed a petition with the Tax Appeals

Commission. The State moved to dismiss Presto's petition which was granted. Presto thereafter filed a petition with this court for review of the dismissal.

The Tax Commission decision to dismiss Presto's petition was based upon its finding that §71.75(4), Stats., was applicable to the facts of this case. The Commission concluded Presto could not seek a refund for 1985, because the field audit of 1985, 1986 and 1987 produced a refund. The Commission also held that the law did not require the State to advise Presto of appeal rights because in essence it had already done so as part of the audit process.

The State correctly points out in its brief that the issues before this court are legal issues and that under §227.57(10), Stats., this court is not bound by the Commission's decision, but ". . . due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred upon it."

This court, after a complete review of the file, concludes the Tax Commission's interpretation of §§71.75(4) and 71.75(5), Stats., is plainly incorrect. Presto seeks a refund for tax year 1985 only. The field audit conducted by State for that year found Presto underpaid \$33,919.02 and assessed Presto the amount of the underpayment and on top of that assessed Presto \$27,231.86 in interest. The plain language of §71.75(4) states that no refund shall be allowed if, after a field audit, there is no change in the tax owed or if a refund is issued. The field audit

for 1985 imposed a significant change in Presto's tax liability for that year.

The fact that the State elected to conduct a field audit for three years, and issue a net check after concluding that Presto substantially overpaid its taxes for 1987 does not alter the fact that for the year 1985 Presto was assessed more tax and interest. Sec. 71.75(4) specifically refers to "any year" and makes no reference to multiple year audits, the aggregate of these taxes owing or overpaid, or the net result of the audit. Each year was audited separately, reported separately and each year produced a different taxable result. The State out of convenience elected to deal with the audit on an aggregate basis, but that decision does not alter the fact that for 1985 Presto owed money and by law was entitled to statutorily created appellate rights. After receiving additional information, Presto elected to pursue its appellate rights and filed a claim form for 1985 on September 13, 1994.

As has been noted earlier, on November 10, 1994, State, by Ronald Mogensen rejected Presto's claim. It would appear that the Mogensen letter was intended by State to be ". . . a final decision of an agency . . ." under §227.47, Stats., which therefore triggers the requirements for such a decision as set forth in §227.48, Stats. The Mogensen letter did not make any reference to appellate provisions.

The Tax Commission decision on this aspect of Presto's appeal is not clear. Apparently the Commission believed that because Presto's understanding of §71.75(4) was incorrect, and

because Presto had already received appellate information as part of the field audit decision, there was no need to follow the requirements of §227.48, Stats. The exact rationale for that decision is not stated. The provisions of §§227.47 and 227.48, Stats., are precise and make no reference to any such exception. Furthermore, those sections are applicable to the Mogensen letter.

The State of Wisconsin has enacted a number of procedural statutes which must be followed to the letter by citizens who seek redress against the State. The proper filing of notices of claim, methods of service of process upon the State, among others, require strict adherence. If those statutes are not strictly adhered to, even the most legitimate of claims are summarily dismissed. The State has imposed similar requirements on itself in the sections cited above. The State cannot simply ignore those mandates out of self-convenience. Although it is a bit troubling Presto waited so long to follow up on seeking what it believed was an available remedy, it did pursue its claim before the Tax Commission and this court within legal time periods.

Although this court is satisfied the State Department of Revenue and the Tax Commission misapplied the provisions of §71.75(4), there is an additional justification for reversing the Commission's decision. Just as every citizen has the duty to pay his/her/its fair share of taxes, tax collectors have the duty to only collect that which is fairly owed. If indeed the State improperly collected all or part of the \$61,150.68 from Presto

for the year 1985, that error should be rectified. It would be unfair to allow the State to keep taxes it was not legally entitled to receive only because of a procedural technicality.

For the reasons stated above, the Tax Commission's decision granting the State's motion to dismiss is reversed and this case is remanded back to the Tax Commission for a decision on its merits.

Dated this 16th day of January, 1997.

BY THE COURT:



Eric J. Wahl
Circuit Judge, Branch 2

cc: Robert A. Schnur
Gerald S. Wilcox